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THE FUNCTION OF A STATE CONSTITUTION

1. *State Constitution as a Limitation upon Legislative Power.*

THE view is frequently expressed that state legislatures have inherently all power not denied to them by state and national constitutions. This view is based upon the notion that state legislatures inherited the powers of the British parliament and possess such powers in full unless denied.

On the other hand it has been said that state legislatures possess no inherent powers, but only such power as has been granted to them by the state constitutions under which they act. This view is supported by the political theories of those who framed the first state constitutions. Certainly the political philosophy of 1776 was based very largely on the notion of social compact and did not recognize the existence of inherent governmental power in either legislative, executive or judicial department. The notion that state legislatures exercise delegated or granted powers is to some extent borne out by the texts of the first state constitutions. So in South Carolina in 1776 and 1778 the legislative power was in terms "vested" in the general assembly and legislative council.[1] Georgia in 1777 provided that the house of assembly "shall have power to make such laws and regulations as may be conducive to the good order and well-being of the state," and expressly granted a power to repeal laws.[2] Massachusetts in 1780 granted to the

[1] South Carolina, 1776, sec. vii; 1778, sec. ii. See also North Carolina, 1776, sec. i.

[2] Georgia, article vii.

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general court power to make "all manner of wholesome and reasonable orders, laws, statutes and ordinances . . . as they shall judge to be for the good and welfare of this commonwealth . . ." and a provision of the declaration of rights at the same time laid down the principle that all powers of government are derived from the people.[1] Similar provisions appear in the New Hampshire constitution of 1784.

In further support of the view that the state legislatures exercise delegated powers are provisions in bills of rights that "this enumeration of rights shall not be construed to impair or deny others retained by the people." And in some constitutions the language continues, "and all powers not herein delegated remain with the people."[2] The most vigorous judicial utterances with respect to delegated legislative power have come from states which have the latter clause.

In 1852 Chief Justice Ranney of Ohio took a strong position upon the matter:

> But the authority of the general assembly is much too broadly stated when it is claimed that all its acts must be regarded as valid which are not expressly prohibited by the constitution. . . . [The people] have the most undoubted right to delegate just as much or just as little of this political power with which they are invested as they see proper, and to such agents or departments of government as they see fit to designate. To the constitution we must look for the manner and extent of this delegation; and from that instrument alone must every department of government derive its authority to exercise any portion of political power. That instrument is the letter of attorney, by which alone they are authorized to act at all, and in all cases they must be able to show that their acts are authorized by it. To prevent the enlargement of this grant of power by construction or otherwise, we find it declared in section 28 of the same article [article viii of constitution of 1802] that "all powers not hereby delegated remain with the people. . . ." From these considerations it follows that it is always legitimate to insist that any legislative enactment, drawn in question, is void, either because it does not fall within the general grant of power

[1] Massachusetts, 1780, part i, art. v; part ii, chap. i. sec. i, art. iv.

[2] e. g., Kansas, Ohio, Nebraska, North Carolina.

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to that body, or because it is expressly prohibited by some provision of the constitution.[1]

In Commissioners of Leavenworth County *v.* Miller,[2] Justice Valentine, speaking for the supreme court of Kansas, said:

> We suppose that it will be conceded by everyone that the legislature have no inherent power of any kind; that they possess no power except such as is delegated to them by the people; and that unless the constitution of the state authorizes them to enact such a law as the one now under consideration, they have no authority to do it. . . . The question then is, not whether the people had the power to authorize the legislature to pass said act; for that must be conceded; but it is whether the people actually did so authorize the legislature to pass such acts.

Justice Brewer in a dissenting opinion asserted the same view with even more vigor.

The North Carolina bill of rights adopted with the constitution of 1868 contained this provision: "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people." Speaking in 1873, the North Carolina supreme court said:

> It is not true as contended for upon the argument that the legislature is supreme except in so far as it is expressly restrained. However that may be in other governments and however it may have heretofore been in this state, it is plain that since the adoption of our present constitution the legislative, just like each of the other departments, acts under a grant of powers and cannot exceed them.[3]

This view has since been departed from, Chief Justice Clark saying for the court in 1906: "That the federal government is one of granted powers solely, and the state government is one of granted powers as to the executive and judicial departments,

[1] C. W. & Z. R. R. *v.* Com'rs of Clinton County, 1 Ohio St. 77 (1852), pp. 84, 85. See a similar expression by Chief Justice Ranney in a dissenting opinion in Cass *v.* Dillon, 2 Ohio St. 607, pp. 628, 639.

[2] 7 Kan. 479 (1871). And see page 549. See also Wright *v.* Noell, 16 Kan. 601, p. 603.

[3] People *ex rel.* Nichols *v.* McKee, 68 N. C. 429.

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but of full legislative power except where it is restricted by the state and federal constitutions, is elementary law." Justice Connor in an earlier case vigorously combated this view, saying: "The argument that the act is valid because no provision is found in the constitution prohibiting its passage is, I submit with great deference but equal confidence, based upon a misconception of the nature of our government and the fundamental principles upon which it is founded." [1]

The views expressed by courts that a state constitution is a grant of power to the state legislature have been largely dicta, as have also been many of the judicial discussions as to the nature of state constitutions. The notion of delegated power as stated by Justice Connor substantially claims that there are other limitations upon legislatures than those in the texts of constitutions, but this view is probably not held today by any court. The Ohio, Kansas, and North Carolina courts have expressly declared that there are no limits upon state legislative power except such as may be found in the state and national constitutions.[2] Yet in a number of cases it has been urged that legislative power is limited otherwise than by the limitations contained in state and national constitutions; and such an argument has often been adopted by the courts themselves.[3]

The theory that a state legislature exercises granted or delegated power does not, however, necessarily imply that the legislature shall be subject to other limitations than those in the texts of constitutions themselves. This is true of the theory as stated by Cooley:

> In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power as it rests in, and may be exercised by, the sov-

[1] State *v.* Lewis, 142 N. C. 626 (1906). Daniels *v.* Homer, 139 N. C. 219 (1905), p. 237. See also Ewart *v.* Jones, 116 N. C. 570 (1895), p. 580.

[2] State *ex rel.* Attorney-General *v.* Corrington, 29 Ohio St. 102 (1876). Ratcliffe *v.* Wichita Union Stock Yards Co., 74 Kan. 1 (1906). State *v.* Lewis, 142 N. C. 626 (1906).

[3] Loan Association *v.* Topeka, 20 Wall. 655 (1874) is a classic example. The doctrine of limitations other than those in the constitutions played a rather large part in the development of judicial power over legislation before the Civil War.

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ereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the constitution of the United States. The legislative department is not made a special agency for the exercise of specifically defined legislative powers, but is entrusted with the general authority to make laws at discretion.[1]

A similar view was expressed by Chief Justice Ranney:

On looking into the constitution we find the granted powers assigned to three great departments of government. . . . Unlike the constitution of the United States, and from the necessity of the case, no attempt at a specific enumeration of the items of legislative power is made. This must, therefore, always be determined from the nature of the power exercised. If it is found to fall within the general terms of the grant, we can only look to the other parts of the constitution for limitations upon it; if none are there found, none exist. But, as the general assembly, like the other departments of government, exercises only delegated authority, it cannot be doubted that any act passed by it not falling within the scope of the legislative power, is as clearly void as though expressly prohibited.[2]

There is little difference of result between Cooley's statement of delegated powers and the theory of inherent powers. The result is very nearly the same whether we say (1) that the state constitution confers "legislative powers," and that this means all power not denied by constitutional texts, or (2) that "legislative power" is inherent, and unlimited except as restricted by constitutional texts. The first statement is perhaps the better, for there is little ground in our history since the Revolution for inherent or original powers in any department of government. In fact, when reference is made to inherent power, what has usually been meant is that "legislative power," granted in general terms, must be interpreted as conferring all governmental power, except so far as restricted by constitutional texts, i. e., that all such power inheres in the general grant. The question at issue becomes, then, one as to the meaning of "legislative power." Does the legislature under

[1] Cooley, Constitutional Limitations, seventh edition, p. 126.

[2] 1 Ohio St. 77, pp. 85, 86. See similar expressions in 7 Kan. 479.

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such a grant have all governmental power except that conferred upon other departments[1] or forbidden by the constitution; or does the grant of "legislative power" in itself constitute a limitation, so that the legislature has not the complete residue of governmental power?

The doctrine of delegated powers may easily lead to the narrower view of legislative authority, for powers are apt to be interpreted more narrowly if they be regarded as delegated. In addition, the notion of delegated power would permit the court to define and to limit the meaning of "legislative power." A quotation from Justice Brewer will indicate what might have been accomplished by this theory had the courts resolutely adopted it forty years ago:

> But though the state government is not one of specific and enumerated powers—that is to say, the legislature is not, by the terms of the constitution, empowered to legislate upon certain named and specific matters only—it is nevertheless a government of granted powers. The constitution creates legislature, courts and executive. It defines their limits, grants their powers. It should always be construed as a grant . . . regarding, first those essential truths, those axioms of civil and political liberty upon which all free governments are founded, and secondly, those statements of principles in the bill of rights upon which this governmental structure is reared. We may properly then inquire what powers the words of the constitution, the terms of the grant, convey.

There was no "due process of law" clause in the Kansas constitution, but there were in the bill of rights statements that all

[1] The principle of separation of powers has come to mean much more than it did in the revolutionary state constitutions. In theory the legislature has residual powers—all powers of government not denied to it by the constitution, either by definite provision or by implication from the grant of power to other departments of government. Otherwise there will be powers not conferred upon executive or judiciary and not denied to the legislature which may not be exercised by the government at all. In the first state constitutions practically all governmental power was concentrated in the hands of the legislature, substantially without limitation, and the principle of separation of powers announced in several of these instruments meant little more than that the same persons should not be members of two departments at the same time. Not until the later establishment of coördinate executive and judicial departments did the principle of separation of powers come to be a real restriction upon the legislature. A grant of "legislative power" in general terms therefore means less today than it meant in 1776.

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men are possessed of equal and inalienable natural rights and that all political power is inherent in the people.

Looking at these simply as limitations upon existing power, as restrictions upon an otherwise absolute supremacy in the legislature . . . they seem little more than "glittering generalities." But when we regard them as conditions upon which legislative power is granted—as the foundation principles upon which all legislative action must be based, and a disregard of which renders such action void—they become substantial, prominent, and vital.

By this argument Justice Brewer reached the conclusion that action of the legislature authorizing a county to issue bonds in aid of a railroad was not within the constitutional grant of "legislative power."[1] According to this view anything which the court regarded as not a proper matter for legislative action could be annulled as not falling within the grant of "legislative power."[2] As a matter of fact, the principle of delegation of legislative power is based upon an interpretation not very dissimilar from that of Justice Brewer. The power to be exercised is properly legislative, and from the grant of "legislative power" is implied a limitation as to the manner of its exercise.[3]

[1] Dissenting opinion in State *v.* Nemaha County, 7 Kan. 549 (1871), pp. 555, 556. A somewhat similar view is that which, in two recent cases, found support for declarations of unconstitutionality in a clause of the bill of rights that: "This enumeration of rights shall not be construed to impair or deny others retained by the people." Marrymount *v.* State Banking Board, 33 Nev. 333 (1910). Mirick *v.* Gims, 79 Ohio St. 174 (1908).

[2] Similar view in dissenting opinion of Justice Connor, in Daniels *v.* Homer, 139 N. C. 219, p. 237, and in dissent of Justice Walker in State *v.* Lewis, 142 N. C. 626, p. 645. The notion that a grant of "legislative power" carried in itself a limitation of powers to those which the courts regarded as consistent with natural rights and a republican system of government has been frequently expressed, and in some cases has been made the basis of decisions against legislative authority. See, for example, Ward *v.* Barnard, 1 Aikens (Vt. 1825); Bank of State *v.* Cooper, 2 Yerg. 599 (Tenn., 1831); Barbour *v.* Louisville Board of Trade, 82 Ky. 645 (1884), p. 648; State *v.* Express Company, 60 N. H. 219 (1880), p. 255. This view receives some support from the grant of legislative power in Massachusetts (1780) and New Hampshire (1784) to make "wholesome and reasonable" laws, and in Maine (1819) to make "reasonable" laws.

[3] Perhaps the limitation that the legislature may not bind its successor in governmental matters belongs here also, but this is a limitation implied in connection with all governmental power.

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Otherwise, however, Brewer's theory has not prevailed, and the canon of interpretation with respect to state constitutions is that the general grant confers complete legislative power except so far as limited by the terms of the constitution itself. Each provision affecting the legislature directly or indirectly thus becomes by interpretation a limitation of the general grant of power; the frequently repeated statement that a state constitution is a limitation rather than a grant of power is true so far as it indicates that the state legislature is subject only to such limitations as may be found in constitutional texts, i. e., limitations independent of any that might have been implied from the grant of "legislative power." Natural rights, independently of texts, have been important at times, but have somewhat promptly been read into indefinite constitutional guaranties, and the decisions based upon the constitutional provisions themselves. Yet, with the increased emphasis upon indefinite guaranties and the development of the due-process doctrine, constitutional limitations have come to be applied which restrict legislative power in practically the whole sphere of governmental action. A condition has thus developed not dissimilar from that which would exist under a doctrine that a state constitution is a grant of power to the state legislature. Where limitations increase (or are enlarged by interpretation) to such an extent that they bind every action of government, a re-grant of power to the government becomes necessary, and to the extent of such re-grant the state constitution becomes a grant rather than a limitation of power.

It is often urged that state constitutions are limitations of power; that state legislatures have all power not forbidden to them by their state constitutions; and that therefore many provisions which have of late come into these constitutions are mere surplusage in so far as they expressly confer power upon legislatures. But such grants have in many cases become necessary in order to loosen the effect of broad constitutional guaranties as interpreted by the courts. Many of the later constitutional provisions which in legal theory do not broaden legislative power are justified, therefore, because in legal fact they do broaden such power. To some extent at least state

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constitutions are becoming a grant rather than a limitation of power. To a large extent the purpose aimed at may be more effectively accomplished by taking the "due process" clause out of the state constitution, leaving state legislatures limited only by "due process" in the fourteenth amendment, but constitutional development usually goes the longer way round and accomplishes its purpose in a manner that will least disturb existing institutions.

A few illustrations will make clearer the fact that some state constitutional provisions serve primarily as grants of power. Of the constitutional amendments adopted by the people of Ohio in 1912 the following four, among others, related to social and industrial legislation: (1) authorizing legislation with respect to mechanics' liens; (2) authorizing legislation fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of employees; (3) permitting compulsory workmen's compensation; (4) prescribing an eight-hour day on public works. At least two of these amendments were occasioned by judicial decisions that legislation was forbidden by broad state constitutional language equivalent to the "due process" clause in other constitutions. The other authorizations in these amendments were inserted as a matter of caution to prevent judicial annulment. Two of these amendments expressly provide that "no other provision of the constitution shall impair or limit" the powers so granted.

A provision was inserted into the Michigan constitution of 1908 that "the legislature shall have power to enact laws relative to the hours and conditions under which women and children may be employed," and this provision relieved such legislation from attack on the ground that it violated the "due process of law" clause of the Michigan constitution.[1] The fact that the constitution of Illinois provides for legislation regarding the safety of miners apparently gives to the general assembly of Illinois greater legislative power as to this subject than as to the health of the miners.[2]

[1] Proceedings and Debates, Michigan Constitutional Convention, 1003–1005, Withey *v.* Bloem, 163 Mich. 419.

[2] Starne *v.* People, 222 Ill. 189.

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These and other provisions have been inserted into state constitutions because it is desired that legislatures should exercise certain powers, and experience has proven that without express constitutional grants state courts will deny such powers to the legislatures. State constitutions contain a number of provisions authorizing different types of labor legislation or themselves laying down legal rules to be observed. Such provisions find their justification, in view of the statements made above, although they are not matters of fundamental law.

Perhaps constitutional limitations may be classed as: (1) express; (2) implied, as a limitation upon the legislature is implied from grant of judicial power to the courts; (3) inherent, as limitations implied from the nature of legislative power. Such is, for example, the limitation that the legislature may not bind its successor in governmental matters; this is a limitation not merely upon the legislature but upon all governmental action. Within this class also falls the "delegation of legislative power" limitation, a limitation unnecessary either from a logical or constitutional standpoint. There are also (4) resulting limitations, as where an express provision authorizing legislative action in a certain manner is construed to prohibit similar action in another manner. Here a limitation is derived by construction from a constitutional provision intended to grant, not to limit, power.[1]

A provision introduced for the purpose of freeing a legislature from restrictions may itself unduly restrict the exercise of the power conferred. For example, an Ohio constitutional amendment of 1912 permits compulsory workmen's compensation through "a state fund to be created by compulsory contribution thereto by employees," and thus limits the legislature as to the details of a compensation scheme which it may adopt. And in California a constitutional amendment, rendered necessary by a court decision, authorized the enactment of a primary law, but a new constitutional amendment became necessary when it was desired to enact a different type of primary law.

[1] See a paper by Professor Ernst Freund in *Proceedings of the Academy of Political Science*, vol. v, p. 98 (October, 1914).

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A provision enabling the legislature to take a certain action will, under the principle that a state constitution is a limitation of power, be construed as limiting the legislature to the form of action thus specifically authorized. In order to avoid the creation of resulting limitations by such an interpretation the Oklahoma constitution provides that "the authority of the legislature shall extend to all rightful subjects of legislation, and any specific grant of authority in this constitution, upon any subject whatsoever, shall not work a restriction, limitation or exclusion of such authority upon the same or any other subject or subjects whatsoever."

Whether we call them grants or not, many provisions of state constitutions are inserted not as limitations, but for the purpose of making sure that the legislature shall have certain powers. Other provisions have been inserted in many cases, not intentionally as limitations, but because the people were at the time sufficiently interested to wish them placed in the constitutional texts. But once in the constitution, such provisions become limitations, and often more burdensome limitations than those whose removal may have been sought. So, the framers of the Texas constitution of 1876 expressly provided for local-option liquor laws. The courts of that state justly concluded that this was done to avoid the question which since 1846 had arisen in many states regarding the constitutionality of local option laws; and then by a process of reasoning to be found only in a state court construing a state constitution, found that the constitutional provision for local option regulation of the *sale* of liquors clearly forbade a regulation of *gifts* even when for the purpose of evading the law.[1] Decisions of this character are not peculiar to Texas. The judicial rule which makes every provision of a state constitution a limitation upon legislative power does not accord with the facts. The rôle of the state constitution has largely changed, but all of its provisions are still construed in the light of its earlier and more limited function. Courts cannot be expected to depart from a rule of construction so

[1] Holley *v.* State, 14 Tex. App. 505 (1883). For the history of this case see 5 Notes on Texas Reports 335. Bottoms *v.* State, 73 S. W. 16 (Texas Cr., 1903).

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long established, even when the rule of construction has to a large extent ceased to be applicable, and if framers of constitutions continue to put therein provisions not intended as limitations they should at the same time make this clear, as Oklahoma has in part done. Much harm, and little if any good, results from limitations derived by judicial construction from constitutional clauses not intended as limitations.

2. *Present Function of the State Constitution.*

The earlier state constitutions were comparatively short and contained little except a framework of government. Many of the later constitutions are very long, and deal with a great variety of matters. The provisions of present state constitutions may for convenience be classified roughly into five groups: (1) those dealing with the organization and operation of government; (2) those imposing limitations upon legislative power; (3) those incorporating into the constitution matters of legislation; (4) those specifically granting power to the legislature; (5) those requiring that the legislature take certain action.

As has already been suggested, the first state constitutions dealt primarily with the organization of government. In large part the later constitutions deal also with organization, but the details of organization are much more fully covered. New offices have been created and provisions regarding them placed in the constitutions. New forms of governmental machinery have been devised. The initiative and referendum, the recall, and municipal home rule have appeared, and there are now numerous clauses about county and city government. One of the things that did most to lengthen the Oklahoma constitution was the embodiment therein of some twenty pages (out of ninety-three) dividing the state into counties and defining county boundaries.

In the first state constitutions there were practically no limitations upon legislative power except those found in the bills of rights. Partly because of dissatisfaction with actions which public sentiment forced the legislatures to take and partly because of legislative incompetence and corruption, there has been since the Revolution a constantly increasing mass of limitations

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upon legislative action. Now such limitations form a large part of the constitutional text. In the Alabama constitution of 1901, for example, of the two hundred and eighty-seven articles, thirty-six are devoted to a declaration of rights, about thirty others to legislative procedure and related matters and eight to a detailed enumeration of matters with respect to which local and special legislation is forbidden or strictly regulated.

Enough has been said already to indicate the reasons for the numerous provisions in state constitutions which expressly grant power to the legislatures. Similar reasons in some cases account for the placing of legislation in the constitution itself. For example, when the highest state court has declared unconstitutional a statute limiting labor on public works to eight hours a day, the people may put into the constitution an authorization for such legislation, but they may with equal brevity put the legislative action into the constitution itself. When the constitution makers of Virginia and Oklahoma desired to create corporation commissions uniting the powers of the three departments of government, they had two alternatives: either to put into the constitution a general provision enabling the legislature to create such a commission; or to put the details regarding the matter into the constitution itself. The plan of granting general authority to the legislature presented difficulties in that the matter could not easily be stated with brevity. The constitution makers therefore decided to embody detailed provisions in the constitution, at the same time making these provisions alterable by legislative action after a certain period of time. Assuming that the purpose aimed at was to be accomplished, it would not be difficult to defend the policy adopted by Virginia and Oklahoma, even though this policy involves the placing of much legislative detail in the state constitution. Of course, the striking of the principle of separation of powers from the constitutions would have accomplished the purpose more briefly and more in accord with the conception of the constitution as fundamental law, but such action would have gone further than the constitution makers desired to go.

Much of the legislation placed in state constitutions may be explained in the same manner as are the Virginia and Okla-

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homa corporation provisions and the rather numerous details of labor legislation. Other provisions of legislation are to be explained either (1) because the constitution makers considered the matter so important that it should be covered in the constitution, or (2) because it was desired to remove the matter from legislative control, perhaps because of earlier legislative abuses. The first ground apparently explains provisions such as those regarding homestead exemptions. Perhaps only a relatively small part of legislation in state constitutions may be explained on the ground that the constitution itself seeks to regulate the matter because of past legislative abuses in regulation. Some legislative details in a constitution would be difficult of explanation, except perhaps in view of peculiar local conditions. To this class belong the Oklahoma provision fixing the flash test for kerosene oil, and provisions in some late constitutions definitely locating all state institutions. On the whole, however, much of the legislation in state constitutions justifies itself, if considered in view of the conditions which led to its introduction.

State constitutions have tended to contain an increasing number of provisions directing the legislature to take certain action. A number of such commands appear in the Oklahoma constitution, providing that the legislature shall make provision for periodical revision of the statutes, shall legislate against combinations in restraint of trade, shall provide for a mandatory primary system etc. Such provisions are, of course, not enforceable upon the legislatures, but do have some moral effect in bringing about the commanded legislative action. Moreover, commands to the legislature are sometimes grants of power in disguise, as is the duty imposed by the Illinois constitution of 1870 to enact laws for the safety of miners.

A state constitution is largely an accumulation of provisions which have been introduced at various periods. Many of the present limitations upon legislatures (as with respect to internal improvements and banking) prohibit action which had led to disaster before the limitations were introduced, but such action is not likely to recur. The constitutional limitations once adopted tend to persist, and are joined by other provisions

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designed to meet new situations. A provision is not apt to be removed unless it occasions difficulties which seem to make such removal necessary.

In all of our newer state constitutions there are numerous detailed provisions (a) relating to the organization and operation of government, (b) placing limitations upon government, (c) granting powers, or (d) expressly legislating as to particular matters; the present tendency is to increase rather than to reduce the number of such detailed provisions. This tendency has been very much criticised on the ground that constitutions should contain only fundamental provisions subject to infrequent changes.

But we should not be confused by the fact that the state instrument of government is called a "constitution." In politics generalizations are dangerous and are usually untrue. A state constitution is an instrument, a means to an end, and is of no importance for its own sake alone. It may be true that the national constitution should be primarily an instrument embodying fundamental provisions and defining the respective powers of the state and national governments. Yet this is not because the instrument is called a constitution; it is because the successful operation of a federal system requires some fairly permanent demarcation of national and state powers. There is no inherent reason why an instrument of state or national government should contain only provisions of fundamental law. A constitution must be judged not by its name, but by the function which it has to perform.

The newer state constitutions are to a large extent not fundamental law in any proper sense, but this does not necessarily condemn them, unless we make the mistake of confusing the name with the substance. The important questions in order to determine the value of present state constitutions are: (1) what does the state constitution now do and (2) how well does it perform its present function? With respect to the first question perhaps enough has already been said. The state constitution now serves two purposes, that of organizing and determining the powers of government (whether by limitation, grant or command), and that of serving as an organ of popular will

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through the embodiment of legislation into the constitution itself.[1] In its accomplishment of both these purposes the newer state constitution far exceeds the limits of what may properly be called fundamental law.

Has the state constitution performed its new functions with as much efficiency as might have been expected from the regular organs of government? The newer constitutions have organized in detail departments and organs of government and have themselves introduced new legislation. On the whole it can hardly be said that their activities in these fields have been less satisfactory than those of the legislatures. However, it must be said that legislative action is more adaptable. Under our present constitutions it is true in general that an error of legislation is easier to correct than is a constitutional error, yet this difference is not an inherent one. This paper does not seek to defend all that has gone into state constitutions, but it does suggest a possibility that there may be error in sweeping and positive condemnation of the newer tendencies with respect to these instruments. The new rôle of the state constitution is no less important than the old. It is proper to put into these constitutions not only provisions regarding the framework of government and limitations upon legislative power, but also provisions which will leave to the legislature a free hand to do what it is desired that it should do, and matters ordinarily legislative in character but of such importance that it is desired to have them somewhat more difficult of change.

State constitutions are made up of provisions of varying importance, and those of less importance and permanence demand frequent change. A provision adopted to meet a defect apparent at one time becomes under different circumstances a bar to progress and should be promptly removed. If a state constitution is to continue to perform the wider function which it now

[1] This function of a constitution may be said to be relatively less important with the introduction of the initiative and referendum upon ordinary legislation. As has already been suggested, grants of power and legislation in constitutions are in part fundamental law properly so called, in so far as they accomplish purposes which because of judicial decisions or for other reasons could only be accomplished by constitutional change.

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performs, the amending process must conform to the needs of the wider function. In many cases, as in Illinois in 1870, the function of the constitution has been enlarged, but without a proper adaptation of the amending process. If detailed provisions, now of a somewhat advanced character, are put into a constitution in such form as to be practically unchangeable, such provisions fail of their purpose and become a bar rather than an aid to progress. With state constitutions filled with provisions not permanent in character, the instrument which does not take this fact into consideration and make provision for such change is defective.

3. *Constitutional Amendment and the Sphere of Legislative Action.*

In substance a clear line of demarcation no longer exists between state constitutions and state statutes, because of the practice of embodying legislative details in the constitution. This weakening of the distinction in substance between state constitutions and state statutes has been accompanied by (and has in part been responsible for) a weakening of the distinctions in form of enactment between statutes and state constitutional amendments. In 1776 and for some time thereafter a relatively slight difference existed between the forms of constitutional and statutory enactment. The distinction became much clearer in later years, and towards the middle of the nineteenth century we have a well-defined notion that state constitutions should not be easily subject to change. More recently the development has been in the opposite direction and, during the past fifteen years more especially, the distinction has weakened very greatly. Since the first quarter of the nineteenth century the really fundamental distinction between statutes and constitutional amendments has been that amendments were required to be voted on by the people, while statutes were infrequently submitted to a popular referendum. But the Delaware constitution of 1897 does not require proposed amendments to be submitted to a popular vote. The distinction in form of enactment between constitutions and statutes is, however, disappearing, largely because of the increased popular participation in legislation

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through the referendum. Seventeen states now have the initiative and referendum,[1] for ordinary legislation. Six states,[2] in providing for the popular initiative, have made it applicable to laws but not to constitutional amendments, and thus permit a less degree of popular participation in the amendment of their constitutions than in the enactment of laws. But where the referendum exists both laws and amendments are subject to the same form of popular referendum.

Of the eleven states which permit a popular initiation of both laws and amendments, five[3] require a larger petition for the proposal of amendments than for the proposal of laws; otherwise the process of amendment on initiative petition is equally as simple as that of legislation. In Oregon, Missouri, Arkansas, Colorado, California and Nevada, both amendments and statutes may be proposed by the same number of initiative petitioners, and adopted by the same number of popular votes. In these states a measure may be called either a constitutional amendment or a law, at the discretion of those who propose it. If called a law it is subject to all of the state constitutional limitations; if called an amendment it supersedes any conflicting provisions of the state constitution.

It may be said that in about half of the states constitutions are easily amendable, and that in a large and growing group of states the processes of amendment and of ordinary legislation are tending to become substantially the same. Both in content and in form of enactment the distinctions between the two types of law is tending to disappear. In other states, however, as has already been suggested, provisions have come into constitutions which require easy change, but the state amending process has not yet adapted itself to the new situation.

If the state constitution is to play the larger rôle now played

[1] From this number should be subtracted Utah and Idaho, whose constitutions provide for the initiative and referendum, but in such a manner that legislation is necessary to carry these institutions into operation. Such legislation has not been enacted. A similar initiative and referendum amendment was defeated in Texas in November, 1914.

[2] South Dakota, Utah, Montana, Maine, Washington, Idaho.

[3] Oklahoma, Arizona, Nebraska, Michigan, Ohio.

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by our newer constitutions, it will contain provisions of varying importance and permanence. This suggests the desirability of a different and easier amending process for the less permanent provisions. Several constitutions have, in fact, already made such a distinction, some by making important provisions more difficult of change, others by making easier the alteration of less important provisions. Alabama provides that the basis of representation shall not be changed by constitutional amendment. The Michigan constitution of 1908 provided that the amending process should not be changed by an amendment initiated by popular petition. The amending clause of the New Mexico constitution may be changed only through the medium of a constitutional convention. Certain of the sections of the New Mexico constitution dealing with the elective franchise and with education cannot be changed unless the amendment be "proposed by vote of three-fourths of the members elected to each house and be ratified by a vote of the people of this state in an election in which at least three-fourths of the electors voting in the whole state and at least two-thirds of those voting in each county in the state shall vote for such amendment;" other parts of the constitution are much easier to amend, and these limitations were introduced for the protection of the Spanish population. Virginia in 1902 made important provisions of its constitution regarding a corporation commission alterable by legislative act after a certain date in the future, and a similar provision was made by the Oklahoma constitution of 1907.

It would be out of the question to lay down in a constitution any general principle that less fundamental and less permanent provisions should be altered by one method and more fundamental and more permanent provisions by another. What is properly fundamental and permanent is a matter of opinion, and such a provision would form the basis for an endless mass of litigation. The principle of the separation of powers has been regarded as one of the most fundamental, yet it can hardly be so regarded now, in view of the trend of governmental reform. The bill of rights also is losing something of its permanence, and inroads are being made upon the doctrines of eminent domain and due process. The general framework of

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government ordinarily has a rather high degree of permanence, but this is not true of the details of governmental organization now found in state constitutions; moreover, the bicameral system, in the past one of the most permanent features of governmental organization, may be replaced within a few years. Any amending clause which makes more difficult the alteration of provisions at the time regarded as permanent may effectively bar future progress.

The framers of a constitution could, however, attach to specific constitutional provisions a statement that such provisions should be more easily amendable than other provisions. So, if it were desired to put a certain matter into the constitution and to safeguard it for a limited time only, the Virginia and Oklahoma plan could be adopted so as to permit alteration by simple legislative act after a term of years. Were this plan not thought desirable, the constitution may permit the alteration of detailed provisions by a two-thirds legislative vote, subject to a popular vote upon petition therefor. Provisions of primarily local importance may well be made alterable by legislative action, coupled with a popular vote of the community affected. Such plans would relieve the ballot of many questions of slight importance now submitted to the voters of the states, because such a vote is necessary in all cases to amend the constitution. In states having the initiative and referendum, many matters of ordinary legislation submitted are more important than proposed constitutional amendments, and the unimportant amendments would be sufficiently controlled if the people in each case had power by petition to compel submission.

The plan just suggested would of course tend to weaken the distinction between the state constitution and state statutes, but it would put back into the hands of the legislature, in first instance at least, some of the power which the expansion of the constitutional function has taken from the legislature, while at the same time it would leave an effective popular control. The easier amending process as to a mass of constitutional details, which can to some extent in advance be labeled as relatively less important, may lead to greater respect for constitutional provisions of a more important and more permanent character.

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Yet such a result is doubtful, and it would be highly unwise for constitution makers of one period to tie up, as permanent and fundamental, principles and institutions which under new conditions may most need to be changed.

As a matter of fact, the result here suggested may be accomplished by (1) putting fundamental provisions alone in the state constitution and by (2) establishing a referendum on laws. The legislature would under such an arrangement be freed from present restraints, but the people would possess all powers which they now exercise with respect to constitutional legislation. However, the states which have adopted enlarged constitutions appear to be fairly well satisfied with them, and there seems little possibility now of a return to the state constitution which should be fundamental law and that only.

Yet, even with the tendencies such as they now are, the state constitution still has a function distinct from that of statute. The constitution can never contain the great mass of the general legislation of the state, and should deal with matters legislative in character only when, and in so far as, such matters are relatively more important. State constitutions contain and will continue to contain much of purely legislative detail, but such detail should, and is likely to, remain incidental to the main function of the constitution as an instrument organizing a state government and determining its powers. And even with the larger function of state constitutions, the constitution itself need not be materially lengthened. It has already been suggested that many provisions in state constitutions have been inserted to meet conditions which no longer exist. Such provisions tend to persist, and the constitution lengthens by a process of cumulation. If constitution makers will winnow out provisions no longer desirable, they need not lengthen the constitution, even though at the same time they place in it many new provisions not properly fundamental in character.

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METROPOLITAN FREE CITIES

A THOROUGHGOING MUNICIPAL HOME RULE POLICY

TO a large degree the history of the relations of states to metropolitan cities in this country is "a history of repeated injuries." It would be a history of "repeated usurpations" as well, were the constitutional rights of the states to commit such aggressions not so well established. The seizure by the state of municipal police, fire, health and even park departments; the creation of special state commissions to carry out large-scale local projects; the franchise grabs put through state legislatures; the legitimatizing of scandalously exorbitant or unjust claims upon city treasuries; and the culminating infamies of the Pittsburgh "ripper" of 1901 are cases in point.

Meanwhile municipal government in our metropolitan centers has become so much more important in every material way than is state government that there is a certain air of unreality, of the ludicrous even, in the continued subjection of the former to the latter. Compare for example the expenditures of large cities with the expenditures of the states in which they are located. From 1903 to 1913, the budget allowances of New York city were over four times as great as those of New York state. Chicago's government in the years 1911 and 1912 was 84.4 per cent more costly than the government of Illinois. In the amount of total expense incurred, Philadelphia has begun to run ahead of Pennsylvania. The great states of Europe do not exhibit this reversal of the rôles of the whole and the part. That England should dominate London, that France should dominate Paris, that Prussia should dominate Berlin, is not inherently unreasonable. In each of these cases the state is large enough, populous enough, financially powerful enough to seem a worthy political superior even to such world cities. Viewed from the same angle, the control of New York city by New York state, of Chicago by Illinois, of Philadelphia by Pennsylvania

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is a gross absurdity, explainable only on the ground that we have followed tradition blindly.

The numerous abuses which have been inflicted by state governments upon our large cities are in no sense accidental; they are the result of certain permanent and fundamental incompatibilities between the two. At bottom it is the age-long conflict between urban and rural. Active malevolence need not be assumed on one side or the other; as a matter of fact such malevolence scarcely exists. Nor is the word "rural" as used in these pages intended to convey reproach. Rural legislators are, no doubt, fairly well equipped for dealing with the problems of country life. It is when they attempt to deal with the problems of great urban centers that conflict is bound to arise.

This fundamental opposition is inherent in the nature of the two authorities. In most of our commonwealths today the government, and particularly its legislative branch, is in effect a grand convocation of county notables. Now most of our counties are predominantly rural in character. Under the prevailing district plan of representation, the influence of smaller cities is usually swallowed up by the party organization of the counties in which they are located. Taken separately, the delegations of the large cities are mere fractions of the legislature. Geographically and in other interests they are too far apart to represent their collective interest effectively. In the quality of their political ideals as well as in their outward aspects, therefore, our state capitols are little more than glorified county court houses.

Unfortunately county politics, which are thus reflected so largely in state affairs, are the most sluggish, the most backward, the most corrupt, and the least informed by public opinion of any in this country. The evil primacy assigned to cities in this connection is misleading. Occasionally an Adams County in Ohio or a Delaware County in Pennsylvania springs into a deservedly shameful notoriety which illustrates this contention; but for the most part the corruption and inefficiency of our counties is so deeply rooted, so commonplace, so petty as to the amounts involved and so sordidly dull that it simply is not news. Contrast the rapid universal circulation and immense

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influence of a metropolitan press with the slow, scant circulation and almost negligible influence of the ordinary country newspaper. The result is that in cities governmental abuses are instantly made known and promptly attacked, whereas in counties of the ordinary rural type they receive small publicity and unless utterly heinous are soon forgotten.

Differences between state and municipal ideals may be illustrated in profuse detail. For example, county offices, and to a considerable extent state offices as well, are seldom highly specialized in character. Hence the ingrained tendency to regard them as spoils or to apply to them the principle of rotation. In metropolitan cities and in the federal government, on the other hand, the technical nature of many official services has forced a demand for the merit system. The national government was free to progress as it desired in this field and the advance which it has made is highly creditable. Cities, however, have been hampered because of the necessity of going to the legislature to ask for a reform which in the light of the experience of many of the rural members must have seemed unnecessary or absurd.

Again in rural primaries and elections such offences as false registration, impersonation, and colonization are virtually impossible, owing to the mutual acquaintance of the voters. Large cities which desire legislation against these evils have to ask it from representatives the majority of whom have difficulty in understanding the nature and extent of the abuses involved.

In our greater cities land values have grown with extreme rapidity to enormous figures. Any rational scheme of municipal finance would long since have laid them under contribution, as German cities have done so effectively with their unearned-increment taxes. But American cities are not free. In state legislatures they have to face a dominant farmer interest stolidly opposed to anything and everything that looks like an additional burden upon land.

Metropolitan cities have acquired debts on a much larger scale than have the states. But while the debts of these cities are larger, their assets are also more extensive than the assets of the states. Great as is this difference between the two

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authorities, it is certain to increase in the future. The big monopolistic business organizations of the country which government must regulate, and which in some cases it will have to acquire and operate, are so distributed geographically that they will fall naturally to the share either of the federal government or of municipal governments. Too small to handle enterprises like our railroad systems, too large to undertake city lighting plants, the governments of the states will escape this economic necessity. Metropolitan cities, however, will soon be largely occupied with the regulation, and probably with the operation, of subways, elevated roads and other transit undertakings, of lighting and heating plants and similar public-service enterprises. They must undertake large projects of sanitation and city planning. In most cases they will be obliged to ask the legislature for permission to do these things. Considering the rural experience and influences predominantly represented in such bodies, it will not be strange if large and comprehensive municipal policies of this character are as freely rejected at state capitols in the future as they have been in the past. Even if the necessity of such great undertakings in metropolitan centers is made clear to the legislature, the financial burdens involved are likely to strike statesmen, who are familiar only with county budgets, as insuperably large.

So far as the great franchise grabs which have been put through state legislatures are concerned, it is, of course, true that city councils have been the scene of similar scandals. After years of agitation, however, it has been possible to educate metropolitan electorates to a more or less adequate conception of the value of public-service franchises. Home rule in franchise matters is, therefore, a fairly safe policy, especially where it is safeguarded by the referendum. But so long as state legislatures have the power to reënter this field there can be no security for the city until both the legislature and the electorate of the state as a whole are educated on the subject of franchise values. Considering the rural origin in large part of the former and the predominantly rural character of the latter, any thoroughgoing education of this sort will be exceedingly slow. Country roads do not furnish illustrations of franchise values and franchise abuses such as are common in city avenues.

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It is not alone in franchise matters and other legislation of a financial character, however, that the domination of metropolitan cities by the state results in grave abuses. Even the virtuous impulses of rural communities may work evil when translated into laws for administration in great urban centers. Country legislators are usually inclined to go to extremes in regulating the liquor traffic, gambling and vice, and in affixing severe penalties for violation of these regulations. Under these circumstances three things may happen: (1) spasmodic attempts by municipal authorities to enforce the law; (2) election of city administrations more or less openly pledged to disregard it; or (3) the collection of bribe money from the underworld for permission to break it. Notoriously the third and worst of these alternatives is the most common.

It is not maintained that the grant of independent powers to metropolitan cities in the field of moral police would instantly cleanse those modern stables of Augeas. Left to themselves, great urban centers would doubtless be somewhat more tolerant toward vice: they would probably prescribe less extreme penalties. Vice itself would continue; it might even increase temporarily, but the present possibilities of hypocrisy and corruption would be materially reduced. This in itself would be a moral gain of the first importance. Nor need one fear that vice would increase permanently under metropolitan autonomy. The better element in our great urban centers may not be so puritanical, but it is certainly no less sincere and determined than is the better element in country districts.

Under existing conditions great cities have to seek their legislative salvation in two separate and widely dissimilar bodies. The municipal council controls in minor affairs, the state legislature in more important matters. Given this dual legislative arrangement, four main conjunctures may arise. First, the same political machine or allied machines control in both city and state. The result is perfect harmony and thoroughgoing spoliation, the latter being worse in the city because of the greater opportunities there offered. Second, one machine controls the state and an opposition machine controls the city. In this case harmony abruptly ceases; "rippers," general confusion and

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the industrious manufacture of political capital proceed apace. Third, reformers control the city and the machine retains its power in the state. Of all sad political situations this is surely the saddest. Municipal reformers usually come into power on platforms filled with pledges to the people which, for the most part, are sincere and admirable. Even when they control all branches of the city government, if they have the legislature against them, they soon learn how circumscribed is their ability to do good, how unlimited apparently the ability of their adversaries to refuse necessary grants of power, to cut off financial resources, to send investigating committees, to harass, misrepresent and delay in every fashion which political ingenuity can suggest. There is, of course, a fourth and happier possibility. Reformers may control in state and city at the same time. Unfortunately this is a very rare occurrence: cycles of reform in the two spheres of government seldom coincide. Longer terms in state offices are partly responsible for this. But even when reform is triumphant on both battlefields at the same time there still remains the difference in quality between state government and metropolitan city government and the consequent possibility of conflict.

Beyond the legislature there is, of course, the possibility of occasional constitutional amendments and at long intervals a sort of final court of appeals for cities in constitutional conventions. Such bodies, however, are apportioned in much the same way as legislatures and, like the latter, are largely dominated by agrarian influences. The settled purpose of rural politicians to rule regardless of all fair proportional principles of representation is manifest in the constitutions of two of our states containing metropolitan cities. In New York it is provided that "no county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators." Already in 1910, New York city had 52.3 per cent of the entire population of the state. If the city continues to grow more rapidly than the up-state districts—and there is every reason to expect that it will do so—this constitutional

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provision will in time discriminate heavily against the greater city's influence in the upper house of the state legislature. Also according to the constitution of Pennsylvania "no city or county shall be entitled to separate representation exceeding one-sixth of the whole number of senators." Philadelphia already has one-fifth of the population of the state.

In consequence of the inveterate antagonism between state and city governments various plans for a better adjustment have been suggested. These are of two main types. Either it is proposed to substitute state administrative control for the present control of a primarily legislative character; or the sphere of municipal "home rule" is to be widened.

State administrative control, the first of these plans, would place cities under the supervision of a board or boards of officials appointed by the state. The advocates of this reform urge as one of its main advantages that it would keep the legislature from meddling too frequently with municipal affairs. Virtually this admits the failure of state control of municipalities as it has been exercised hitherto — that is, largely through the legislature. It is also maintained that state supervisory boards of an administrative character could supply cities with much valuable expert advice and thus help to secure uniformity of administration among them. No doubt the latter function might be performed to the distinct advantage of municipalities of the second or third class. There are enough cities of this size in most of our American states to make expert comparisons and an exchange of experience among them of decided value. A supervisory administrative board in New York, for example, might successfully collate the experience of the seven second, and the forty third-class cities of the state. It is unlikely, however, that New York city would be greatly impressed thereby, and it is certain that the metropolis would object strenuously to any state administrative control cut to a uniform second or third-class measure. As to expert advice furnished by such state boards, it also is likely to be of advantage chiefly to second or third-class cities. Their problems are similar, they emerge at about the same time, and cities of this grade are hardly rich enough to employ the ablest counselors or to

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indulge in much experimentation on their own account. In the one large city of the state with its million or more of inhabitants, however, quite novel problems and undertakings of unprecedented magnitude are constantly presenting themselves. No general state board could be expected to give adequate attention to such matters. Fortunately metropolitan cities are wealthy and intelligent enough to secure the best expert advice and, if necessary, to make pioneer experiments for themselves.

All things considered, therefore, state administrative supervision, while likely to be of distinct benefit to second and third-class cities, is at best unnecessary, and at worst too narrow for the uses of metropolitan communities. Late developments along this line recognize frankly the unique character of metropolitan conditions. For this reason New York state provided two commissions to deal with its public service problems, assigning one of them exclusively to the greater city. And Massachusetts has given to state commissions the administration of the main sewerage, water, and park systems of a metropolitan district which includes Boston and more than a score of encircling cities and towns. Such sweeping delimitations for purposes of state administrative control may appear now to be mere matters of convenience, but when the time comes for the attainment of a full measure of autonomy by metropolitan cities they will prove epoch-making precedents.

"Home rule," the second reform designed to reduce friction between cities and states, proposes to extend the functions which the municipality may exercise free from state interference. It may even go so far as to permit the community to draft its own charter. In the most liberal home-rule schemes, however, a goodly number of powers are always reserved to the state. As to just what these powers are, or rather as to how far each of them should go, there is the widest difference of opinion among legislators and theorists. A majority of authorities seem to agree, however, that the state's police power and its power to regulate local finances, elections and schools are clearly beyond the scope of municipal home rule. Within these reservations of power to the state lie the greatest possibilities of injury to the city. Of what advantage to the munici-

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pality is the right to make its own charter if the legislature can still control its finances or impose upon it unenforceable and graft-breeding excise laws? A brief review of the leading cases of state aggression which have occurred in American municipal history will show that all of the worst of them involve police power, local finance and elections. In other words, municipal home rule as it is currently understood stops just short of the limits within which it would confer any real freedom upon our cities.

What better solution can be offered? For second and third-class cities an extension of administrative supervision and of the sphere of home rule may be sufficient. But the emancipation of metropolitan cities from the controlling influence of state governments must be much more thorough and far-reaching. Completing the evolutionary process initiated by the municipal-home-rule and administrative-supervision movements, such an emancipation must remove radically the possibility of the many gross abuses and petty irritations of the present system of state control. Why should we not look forward to the entire separation of metropolitan cities such as New York, Chicago, and Philadelphia from state ties, and their erection into free city commonwealths within our federal system? Unconstitutional this proposition doubtless is, but as an ultimate ideal it is certainly preferable to the dull and servile situation in which we now acquiesce. Municipal home-rulers, so-called, have failed lamentably in the past, primarily because of their "damned wantlessness," to use Bernard Shaw's phrase. Timorously asking little of the legislature, they have obtained less. Not until they learn to present their demands in logically complete form, not until they "have looked for a city which hath foundations," will the way be opened for a great epoch of municipal self-reliance and self-development fostered by freedom—whether or not that may lead us eventually to metropolitan free cities.

Of course this proposal will be attacked as unprecedented. Such it is, so far as the history of the United States is concerned. Under the German federal system, however, three free cities—Hamburg, Bremen and Lübeck—exist without dis-

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turbing in the least the balance of empire, a fact of quite special significance considering that their governments are republican in form, while the governments of the other states and of the Empire itself are monarchic. These cities are splendid examples of municipal progress and self-development in freedom. Largely by their own exertions, forethought and sacrifice two of them have taken rank among the world's greatest seaports; and in general much of Germany's preëminence in municipal government is due to the wide sphere of local power which all her cities possess. In Switzerland, Basel presents a clear case of the separation of a state (canton) into independent states (half-cantons), one urban, the other rural in character. Mutual incompatibility led to this divorce which occurred in 1833, since which date both parties have prospered in single blessedness and nevertheless remained loyal members of the federation. While not metropolitan as the size of cities is reckoned elsewhere, Basel is the second city of Switzerland. Zürich, the first city in the federation, and Geneva, the third, are also so limited in territory that they may properly be considered city states.

Critics may also urge that the proposed solution involves the advocacy of political disintegration, of "secession." But a division of territory that removes forever the cause of a host of old abuses, that separates unlike social units and permits each to develop freely in its own way, is not disintegration but reconstruction. As for "secession," while the new free cities would indeed be separated from their former state affiliations, on the other hand they would become members in full sovereignty of the Union. It is true, of course, that this would mean the introduction into our federation of a new type of state, but the difference between such city states and the older territorial states will scarcely be so great as the differences already existing. Contrast the black-belt commonwealths of the South with those on our northern tier; contrast eastern manufacturing with western agricultural or mining states. Yet the essential loyalty of all these unlike units and the strength of their union is beyond controversy. Bearing this in mind, it is unthinkable that American commonwealths differing from

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others only in their urban character should not function properly under our federal system.

Nor will the importance of the states from which the new free cities are taken be too greatly reduced. If Pennsylvania, New York and Illinois had released their metropolitan cities in 1910, the remaining portions would still have ranked as first, fourth and sixth among the states of the union in population.[1] On the other hand the new city states would have been quite large enough to have stood alone and taken high rank in the federal sisterhood. In 1910, New York city alone had a larger population than any state in the Union excepting only Pennsylvania, Illinois, Ohio and New York state itself. Chicago's population exceeded that of any one of thirty-three of the smallest states, and Philadelphia's that of any one of twenty-four smallest states.

But are metropolitan cities capable of self-government?[2] Various writers have professed to discover all sorts of political differences between country and city populations. Beyond the certain fact that the latter are better informed on current topics, more alert and more closely in touch with each other, most of these alleged differences are chiefly the reflection of the idiosyncrasies of the authors. Nowhere has it been proven by experience that free city states are incapable of self-government within the limits of a federal system. On the other hand in two modern countries the contrary has been demonstrated. If American city electorates were really so incompetent as some writers have alleged, they should not be allowed even their present measure of self-government, but should be subjected to the complete control of the state.

[1] According to the census of 1910 the figures are as follows: Pennsylvania outside of Philadelphia, 6,116,103; Ohio, 4,767,121; New York city, 4,766,883; New York state outside of New York city, 4,346,731; Texas, 3,896,542; Illinois outside of Chicago, 3,453,308.

[2] The percentage of foreign-born in our metropolitan cities will, of course, be urged as proof of their incapacity for a larger measure of home rule. New York city has a foreign-born population of 40.8 per cent. The percentage for Chicago is 35.9, or slightly larger than that for the state of Rhode Island. If thirty-three per cent of foreign born have not wrecked the state government of Rhode Island it does not seem probable that the 35.9 per cent of Chicago would break down an autonomous

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Specifically the question of the self-governing capacity of metropolitan free cities narrows down to this: Can the people of such cities be trusted as well in matters of education, finance, elections, and the exercise of the police power which have not yet been granted them, as in those local matters which they already decide for themselves? Considering the enormous superiority of city over country schools, who can urge that there is the slightest danger in a grant of educational autonomy? As centers of banking interests, as homes of millions of savings-bank depositors, is there any such danger of wildcat finance and repudiation in metropolitan cities as in some of our predominantly rural states? The exercise of police power and the maintenance of honest elections are much more complicated affairs in large cities than in country districts. City populations should know best how to deal with such problems, however, and are at least as firmly determined to solve them, as country communities are to solve their own problems of a similar character. Upon analysis, therefore, the alleged inability of great cities to govern themselves proves to be more a matter of prejudice than of probability.

Many minor objections of a legal character and many knotty questions of detail will, of course, have to be answered by the advocates of real home rule for metropolitan cities. Such considerations, however, hardly find place in a preliminary discussion of the subject. Against all such criticisms may be set many solid advantages to the states as well as to their emancipated cities. The example of the new freedom enjoyed by the latter cannot fail to secure more generous treatment for the smaller cities which remain under the supervision of the state governments. Relieved from the present overwhelming pressure of urban affairs, the legislatures of our commonwealths can

government in that city. And Philadelphia's foreign-born percentage is only 25.1, or less than that of Montana (25.2 per cent); New Jersey (26.0 per cent); Minnesota (26.2 per cent); North Dakota (27.1 per cent); Connecticut (29.6 per cent); New York (30.2 per cent); Massachusetts (31.5 per cent); and Rhode Island (33.0 per cent). Unfortunately for the argument referred to above, Philadelphia's low proportion of foreign born has not saved it from periods of gross mismanagement of its municipal affairs.

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devote themselves effectively to the great problems of country life, such as the conservation and development of agricultural resources and methods and the construction and maintenance of a comprehensive system of highways. Equipped with sufficient territories for future expansion, for the completion of sanitary and engineering projects, for parks, parkways, playgrounds and forest preserves, and with powers equal to their great destinies, the new city-states will be equally well employed about their own business.

Naturally with these extensions our present jealous little suburban units will be brought into unison with the master plans of which they are now so often protesting and reactionary parts. As things are now, the intelligent, clean-living, high-spirited citizenship of these independent areas is lost to the great city in which, nevertheless, their property, business, social and other interests largely lie. With the political incorporation of these elements a tremendous new impulse will be given to all movements for better metropolitan government. Nor need such suburban areas fear for the cherished privileges they now possess. As long as our great cities consider themselves local governments pure and simple, they are naturally prone to a cramping administrative uniformity throughout their territory, which suburban communities instinctively dread. With the extension of their boundaries, and most of all with the conception of themselves as sovereign states, it should be possible for metropolitan cities to sub-divide themselves for purposes of local government, allowing considerable liberties to their various parts. Such action would provide a solution for one of the most pressing and most neglected of our present-day metropolitan problems.

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WASHINGTON'S FIRST EXPERIMENT IN DIRECT LEGISLATION

AT the general election of 1914 the electors of the state of Washington had an opportunity to use for the first time their newly-adopted devices for direct legislation. At the regular session of the state legislature in 1911 there was formulated and adopted a resolution proposing to the electorate an amendment to the constitution making possible the use of the initiative petition and the referendum as a means of legislation. At the general election of 1912 the amendment was adopted.

In the initiative device there was provided a double scheme. In the first place there was the customary method of securing a place on the ballot for a measure proposed by petition and backed by a sufficient number of voters. "Ten *per centum*, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition." These petitions should be filed with the secretary of state not less than four months before the election at which they were to be voted on. The second provision was for a mandate to the legislature; if a petition, with the requisite signatures, were filed not less than ten days before the regular session of the legislature, the same should be transmitted by the secretary of state to the legislature, there to take precedence over all matters except appropriation bills. If the legislature enacted the proposed measure it should become a law under the same conditions as any other act, except that it must in any case be subject to a referendum, or the legislature might refer it to the electorate upon its own initiative. If, however, the proposed measure were rejected or not acted upon, it went automatically upon the ballot for decision at the polls. Moreover, the legislative body had the option of framing a substitute measure embodying the same general principle, in which case both the measures should go upon the ballot. In the latter event voters should indicate by one mark their approval or disapproval of the general principle, and by another, if it were approval, their preference be-

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tween the two. If a majority voted in the affirmative on the first proposition, the measure receiving the larger number of votes was to become a portion of the law of the state. If the general principle failed to secure a majority of votes cast, both measures would fail, but both sets of votes should be canvassed and made public. No provision was made whereby amendments to the constitution might be proposed by initiative petition.

Petitions for the reference of any act of the legislature must receive thirty thousand signatures, at most, or six per cent of the total number of voters registered. Except for the proportion of signatures to the total number of registered voters, there is nothing to note in the device for the referendum as it appears in Washington.

At the 1913 session of the legislature an act provided in detail for the working of the constitutional amendment. Briefly the steps may be thus enumerated.

Measures to be submitted to the electorate by initiative petition must be filed, not earlier than ten months before the election, with the secretary of state, who must transmit the same to the attorney-general to formulate, in not more than one hundred words, a suitable title expressing the true intent of the proposed bill. Provision is made for a hearing by the superior court of Thurston county (in which Olympia, the seat of state government, is located) on the suitability of the title, in case the proponents deem the same inadequate in any manner, and the decision of this court is final. When the title has been determined the same is sent to the proponents, who then may proceed to secure the requisite number of signatures.

After the blanks, printed in approved form, have been signed they are filed with the officer having charge of the registration books, who proceeds to check the signatures against his list of voters and to place his initials beside those names which he finds in his books.[1] Thereupon the petitions are filed with the secretary of state.

[1] Since voters outside incorporated places do not register, marking of signatures as legal devolves upon justices of the peace, road supervisors, members of the school board, or postmasters; with the exception of the last these officials are required to examine and initial the lists.

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The secretary of state exercises his discretion in receiving petitions, but the superior court of Thurston county may, by mandate, compel him to do so. He has the sheets of signatures bound into convenient volumes and then proceeds to canvass and count the legal signatures. If he finds a number sufficient to fulfill the requirements of the law, he certifies to the fact and retains the documents in the archives of the state, transmitting the measure to the legislature when it convenes, or forwards the title to the various county auditors for placing upon the ballot for the election.

If the proponents of the measure are dissatisfied with the determination of the secretary of state regarding the number of legal signatures, they may apply to the superior court "for a citation requiring the secretary of state to submit said petitions to said court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be, which application and all proceedings had thereunder shall be speedily heard and determined." While no appeal may be allowed from the decision of the superior court, such decision may be reviewed by the supreme court on a writ of certiorari sued out within five days of the rendering of the decision, and this court may compel the secretary of state to issue the certification if the facts warrant.

Details of the law regulating the proceedings with initiative petitions have been stated because the measures submitted to the electorate in 1914 brought into action practically every step which had been provided.

A consideration of the direct legislation of 1914 falls under three main headings: (1) the measures themselves, with the circumstances of their submission; (2) the legal steps involved in placing them upon the ballot; and (3) an analysis of the vote given in November.

I

The measures appearing on the ballot fall into the following groups: (1) seven measures submitted by initiative petition; (2) two bills referred by the legislature, and (3) one amendment to

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the constitution proposed by the legislature to the electorate.[1] The initiated measures may be further subdivided into three groups: (1) five proposed by a joint legislative committee of the Grange, the Farmers' Union, and the State Federation of Labor; (2) one, for state-wide prohibition of the manufacture and sale of alcoholic beverages, proposed by the forces which have been active in many of our states for such action; and (3) a bill for an eight-hour day proposed by certain elements in the labor group of the state.

Not long after the close of the session of the legislature in 1913, the joint legislative committee referred to, which had been active in its efforts with the legislative body, began proceedings to "initiate" the measures which they had failed to have enacted into law through the customary channels. The result of their activities was the filing with the secretary of state of seven proposals, popularly known as the "Seven Sisters." These were (1) a "Blue Sky" bill, (2) a measure to abolish the State Bureau of Supervision and Inspection, (3) one to prohibit employment agencies from taking fees from workers, (4) a First-Aid measure (to fill an acknowledged lack in the Industrial Insurance Act of 1911), (5) a measure to employ convicts on the public highways of the state, (6) a comprehensive measure regulating and taxing the fisheries of the state, and, (7) a proposal to abolish the State Tax Commission and vest its duties in the Public Service Commission.

The "Blue Sky" measure was an attempt to secure a law analogous to similar measures in such states as Kansas and Oregon. It defined an investment company and would have placed all such organizations under the supervision of the Public Service Commission, to the end that investors might be protected from wildcat companies and all sorts of "get-rich-quick" schemes. It was to have been within the province of the Commission to examine into all proposed organizations and to prevent their doing business within the state if it appeared that their proposed plan of business was not "fair, just, and equitable," or if they did "not intend to do a fair and honest busi-

[1] The original constitution, of course, provided for the submission of all amendments to the electorate.

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ness." Moreover, there could be revoked the charter of any corporation engaged in offering "securities, or promoting, platting or selling town-sites or other subdivisions of real property in this state, or elsewhere" and "conducting its business dishonestly, unjustly or unfairly to its members, stockholders, contributors or purchasers of securities or real property." The Commission was to have power to investigate all organizations doing business of the nature which would come under the provisions of the act. Undoubtedly there is need, not alone in Washington, of curtailing the activities of companies, the chief purpose of which is to enrich the promoters at the expense of a gullible public. Any steps, however, in this direction, involve a highly technical knowledge of business organization and management to the end that legitimate transactions may not be hampered while those of a questionable character may be prosecuted with vigor. The proposed act seemed to indicate that its framers were not altogether of that class of technically informed men, and it is the opinion of those competent to judge that this measure would have made little difference in the actual conditions now existing under law already on the statute books. On the other hand the looseness of the phraseology could not fail to have provoked endless litigation. In brief, this measure falls in the class of those so technical that experts must frame the bill, and the provisions are such as to be beyond the comprehension of more than a few of the voting population. An intelligent vote, then, was practically impossible, and those who gave their assent to the measure must have been, in considerable degree, actuated by a blind desire to hit at an indefinable evil which was felt but not understood.

The proposed bill abolishing the State Bureau of Supervision and Inspection of Public Offices related to a commission formed by law a few years ago. To this bureau was entrusted the task of investigating the books of all kinds of public offices wherein public moneys were collected or expended. In particular it was to ascertain whether or not the law had been complied with in matters of indebtedness, forms of warrants, and the like; it had power to audit the books of all such offices and to advise changes in the method of keeping such books. The activities

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of the bureau have been considerable, resulting in the uncovering of many examples of laxity and perhaps fraud in many instances; municipalities, road and school districts, counties, have all come in for criticism, and many leaks have been stopped with the saving of some hundreds of thousands of public funds. The proposed bill intended to vest in the state auditor the functions of the bureau, authorizing him to employ not more than three accountants. On general principles, anything which would tend to decrease the many boards, bureaus and commissions in the state would be laudable, but in this case an apparent impossibility was attempted, since it would be obviously out of the question for the office of the state auditor, even with three additional accountants, to handle the business of a bureau now employing eighteen accountants. As the matter stands, the auditor finds it impossible to check the accounts of the various state officials and institutions in any adequate manner. It has been charged that this bureau is a "grafting" institution, willing to accept "reasons" for passing the accounts of certain officers and that in any case the charge of the auditing should not come upon the office investigated. On the other hand it has been alleged that this was a "spite" measure, emanating from certain groups where the bureau has been too active for comfort.

The measure for abolishing the collection of fees by employment agencies, hence abolishing private agencies, had the virtue of brevity. The measure was a sweeping one and made no distinction whatever between agencies; teachers' agencies share the same fate as those which send lumberjacks to the woods and muckers to the mines. Moreover, the measure was negative; it was apparently assumed that public employment agencies would be created to fill the need, if a real need for any agency existed. While the activities of those agencies which exploit ignorant laborers—and they are not a few—ought to be eliminated, it is questionable whether such a measure with no constructive features should make so drastic a change.

The so-called First-Aid Bill proposed to require the employer of labor in extrahazardous occupations to pay not more than $100 (if more were required it was to come from the funds in

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the hands of the Industrial Insurance Commission) for the cost of medical, surgical and hospital treatment of any of his employees who might be injured in the course of regular work. The measure came in for much criticism in that it made no restriction as to kind of attendance, length of care etc., and it was asserted that it would open the door to a new breed of ambulance chasers. Obviously the employing class, having no hand in the framing of the measure, denounced it as one-sided, while admitting, for the most part, the need of some act to supplement the Industrial Insurance Act.

Another of the "sisters" had in mind the saving of expense to the state by having all able-bodied inmates of the state penitentiary and state reformatory employed upon the highways of the state, camps to be established for the housing of these persons while at work in any vicinity. From two points of view the measure was objectionable; it would have upset completely a comprehensive plan of road construction which the legislature of 1913 enacted after a long period of agitation on the subject. Secondly, it was unsound from a penological point of view, in that it allowed no option in the kind of employment, and would have made no discrimination between long-term men and repeaters on the one hand, and those probably redeemable on the other. Again, it would have thrown out of use a large jute mill recently constructed at the penitentiary in which the prisoners work at making grain sacks.

The eight-hour proposal did not come from the joint legislative committee, but from a faction of laborites working independently. One of the interesting side struggles of the campaign was waged over the attitude of the master of the state grange who was quoted as opposing the measure and as favoring it. The measure was to prohibit all employers of labor of any sort from requiring or permitting their employees to work more than eight hours in any twenty-four, or more than forty-eight in any one week.[1] Here again was a proposal which had the

[1] Agricultural laborers might be employed an extra two hours per day "for work which is unavoidably and necessarily incidental to farm management." In other lines of work in an extraordinary emergency, "such as danger to life or property, or where such eight-hour limit would unavoidably and necessarily prevent other workers . . . from working the full eight-hour day, the hours for work may be further extended."

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germ of a good idea when properly applied; but in a state like Washington, where there is so much seasonal occupation, it is difficult to perceive how, at the present time, a satisfactory result would follow such a step. As a matter of fact a considerable portion of the labor of the state, where it affects those most in need of such protection, is already on an eight-hour basis.

The prohibition measure was a comprehensive act, and probably the most carefully drawn of all the initiative measures. It has been called the most "dry" of all dry laws in any of the states. Unlike the proposal in Oregon, where an amendment to the constitution prohibiting the manufacture and sale of intoxicants added no administrative features, this bill outlined in detail the whole administration of the matter. The usual fight was waged. Much money was spent on both sides, and each side accused the other of unfair tactics. As usual it was difficult for either side to meet the arguments of the other, since the fundamental issue was that of two (or more) standards of moral action, and not essentially an economic or political matter.

The referenda, submitted by the legislature, included an act creating a fund for the retirement of superannuated or disabled teachers, and a stupendous irrigation scheme.

The first was a pretty carefully drawn act, making provision for a pension fund derived from assessments upon teachers and from the state public-school fund. As is customary with such measures, provision was made whereby present teachers might accept the benefits and incur the duties of the act or not, while those entering upon their duties after March, 1915, would necessarily have been subjected to its terms. The most obvious criticism of the measure, assuming the general principle to be acceptable, was of the assessment feature, where the percentage to be paid was rather high.

The second referred act[1] probably embodied as many in-

[1] This measure would under any circumstances have gone upon the ballot without the recent referendum amendment; the original constitution limits the debt which the legislature may incur to $400,000, all in addition to this, except for repelling invasion or repressing rebellion, requiring a reference to the electorate. (Wash. Const., art. viii, sections 1 and 3.)

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tricate points as a bill might well do. The mere statement that it would have provided a vast engineering project for the reclamation of upwards of 400,000 acres of semi-arid land in central Washington, the water being taken from a lake some sixty miles away and siphoned under the Columbia river, gives a notion of one phase of the measure. On the other hand the financing of the scheme called for state guarantee of bonds not to exceed $40,000,000 in the aggregate. Aside from the technical features the proposal involved a very complicated economic problem, of which some of the aspects are: the readiness of the money market to absorb such an issue of bonds; the number of years which would have to elapse before any return might be hoped from the investment; the effect of the increased acreage upon land already used for purposes such as this land might be adapted to; and the general effect upon the agricultural markets for the products of irrigated sections.

The amendment proposed by the legislature involved the matter of alien land ownership. The original constitution provides that no alien, unless he shall have declared his intention to become a citizen of the United States, shall hold land in the state of Washington, unless said alien acquired the land by "inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts"; provided, that the prohibition should not apply to "lands containing valuable deposits of minerals, metals, iron, coal or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of products therefrom." The amendment proposed to add the further proviso:

> This section shall not apply to conveyances of lands lying wholly within the limits of municipal corporations when made to resident aliens. In the event of a resident alien becoming a non-resident for the term of five years, his interest in lands in the state shall be vested in the common school fund.

This added provision looked harmless enough till there was brought to the attention of the public the fact that a decision of the supreme court of the state had declared that all counties, school districts etc. were "municipal corporations" in the view

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of the law.' If such an interpretation, provided the amendment had passed, had been applied, it is easy to see that the alien land-ownership clause would have been repealed under a subterfuge. Dark hints as to the forces back of the proposed amendment were numerous; among them was that bugbear of the Pacific Coast, the possibility of large landed interests in the hands of Orientals. It is, perhaps, significant that about the only efforts in behalf of the measure were made by realty men who claim that the present constitutional restriction (1) keeps away foreign capital, and (2) that it prevents aliens from paying their proper share of the taxes. Both of these contentions are interesting from the point of view of the economist.

Having briefly indicated the content of the measures actually placed upon the ballot, it remains to give passing notice to the two "sisters" which failed to come before the electorate. One of these was a comprehensive measure for the regulation and taxation of fishing in the rivers and on the littoral of the state. The bill was practically identical with one introduced into the legislature at the last session, and which was alleged to have been defeated by the log-rolling tactics of representatives from the districts most likely to be affected. The other measure sought to abolish the Tax Commission, a body whose more important functions are the valuation of property, particularly that of organizations having possessions in more than one county, and equalizing the same for purposes of taxation. The functions of this commission were to have been vested in the Public Service Commission.

II

As stated above, the placing of the measures by initiative petition upon the ballot in November tested the law, constitutional and statute, at nearly all possible points. It was especially in connection with the "seven sisters" that the legal issues were raised. These measures were filed with the secretary of state on January 29, 1914, and titles were prepared by the attorney-general on February 9. On three of the measures[1]

[1] Employment Agencies; First Aid; Convict Road Labor.

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it was maintained by the proponents that the titles were insufficient and misleading, and relief was sought from the superior court of Thurston county. By the twentieth of March petitions were being circulated for signatures.

At this point there arose another difficulty, brought out when the signed petitions were filed at Olympia. It was held by the secretary of state that initialing in ink by the proper official was necessary for the signatures to be counted as valid.[1] On the other hand it was maintained by those circulating the petitions that officials in districts where registration was not required were merely to initial and certify.[2] Since these petitions had already been filed with the secretary of state, the ruling made some of the work of no avail. Later, in connection with the question of the validity of certain signatures, arising in the official canvass, the superior court and the supreme court agreed that initialing in pencil was admissible.

While signatures were being obtained and forwarded to the secretary of state there appeared strong opposition to all the measures in the form of an organization called the "Stop-Look-Listen League" as well as in several manufacturers' and employers' associations. To all outward appearances the first of the groups was well supplied with funds, for it not only established headquarters in all the counties but showered the state with pamphlet literature attacking all the measures, and at the same time sought to obtain from signers of the petitions cancellation of their signatures. A large number of persons gave written permission for the withdrawal of their names, and in such cases the secretary of state did not count those signatures. The proponents attempted to secure the addition of other signatures at the time the withdrawals were made, the petitions having been filed and the official canvass about to proceed, but this was not allowed. It was further charged that the Stop-Look-Listen League violated the provisions of the law, which

[1] The secretary of state held that the attorney-general had rendered to him an opinion to this effect, although the latter denied having done so when the matter was before the courts.

[2] The words "in ink" appear in the law only in connection with initialing by clerk or other officer in incorporated places where registration is required.

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prohibited advertising for or against petitions and paying circulators. This particular charge has not been made a matter of court proceedings, and it is not likely that any steps will be taken.

The petitions, alleged by the supporters of the measures to have each over 32,000 signatures, all duly attested, were presented to the secretary of state, accepted and filed July 3rd. From this point the proponents state that there were several violations of the law. The first infraction came relative to the provision

> that if the secretary of state accepts and files any initiative petitions . . . he shall forthwith . . . detach the sheets containing the signatures and cause them all to be firmly attached to copies of the law . . . in such volumes as will be most convenient.

Before the binding of the signatures, however, there was a "preliminary count," taking about a week, so that the actual placing of the petition sheets in form for the official canvass took place on July 10. The proponents charge that this delay and preliminary count was in order that agents of the Stop-Look-Listen League might have access to the signatures for information in their campaign. Moreover, it is alleged that, in binding, the sheets were mixed in such a way that certificates and petitions were separated.

By the official canvass the secretary of state determined that three of the measures had a sufficient number of signatures to appear on the ballot,[1] and that four failed to show the requisite strength.[2] Thereupon the proponents appealed to the superior court for relief, while the opponents took appeal as against the accepted petitions, with the exception of the Blue Sky Bill, there being no funds forthcoming for its opposition. The superior court gave a hearing from August 12 to August 20, and rendered a decision on the 27th, with the result that none except the First Aid measure were entitled to appear on

[1] Blue Sky; Employment Agencies; First Aid.

[2] Abolishing Bureau of Inspection; Convict Road Labor; Taxation of Fisheries; Abolishing Tax Commission.

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the ballot. The next step was a review in the supreme court on a writ of certiorari, on the part of the proponents, to secure a writ of mandate restoring the rejected six, and, on the part of the opponents (Stop-Look-Listen League), to secure an injunction to prevent the one which had run the gauntlet of the superior court from further appearance. The supreme court, with five justices sitting, gave a hearing on September 11; four days later the chief justice ordered a rehearing before the full bench for September 18. At this hearing five justices determined that four of the measures[1] rejected by the superior court were sufficiently supported, and that two[2] did not have sufficient valid signatures. Two justices dissented, stating that the door was being opened to all kinds of fraud in obtaining and counting signatures when other petitions should be circulated; another justice made no statement of his position.

Thus, after traveling a very stony path, five of the "seven sisters" reached the point where their fate might be decided by the electorate. The question of publicity, however, still remained. By law the secretary of state is required to issue a pamphlet containing all measures to be voted upon, together with such arguments as may be submitted for and against each, provided that not more than two affirmative arguments and three negative arguments shall be printed. To cover the cost of printing the arguments the secretary of state is authorized to require a deposit of such sum as he thinks will suffice. In this case the sum was set at $200 per page, an amount considered excessive by the joint legislative committee engineering the campaign of the "sisters." This committee sought relief from the supreme court, which denied the petition by a divided decision. Not to be daunted, however, the committee proceeded to print its own arguments, together with a history of the measures, and sent the leaflet to all registered voters in the state, claiming that, with the same size page and same quality of paper as the official pamphlet, the cost was $75 per page.

[1] Abolishing Bureau of Inspection; Employment Agencies; First Aid; Convict Road Labor.

[2] Taxation of Fisheries; Abolishing Tax Commission.

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After the final decision as to which measures should actually go upon the ballot the fight centered about the prohibition and the eight-hour measures. In both cases there was intense interest throughout the state, a fact attested by the heavy vote cast for each, the former running far ahead of all other measures as well as in advance of the total vote for United States senator, while the latter pushed the senatorial vote hard.

III

When the smoke of the battle had blown away, and the combatants had counted up gains and losses, it appeared that but two of all the propositions, of whatever nature, had secured sufficient support to become a part of the law of the state, namely, state-wide prohibition and the abolition of private employment agencies. The others lost by votes ranging from the barest majority to an overwhelming snowing-under.

The table on page 249 presents some of the more salient aspects of the returns.

On the whole, perhaps the most interesting fact of the whole vote is its relative lightness in so many cases. While the total vote, 381,643, is slightly larger than might have been expected in the off year (it was approximately eighteen per cent above the vote for 1912 [1]) it is not by any means extraordinary. That some of the measures for consideration should have received 70 per cent to 80 per cent of the total vote cast shows that, except for one or two measures, the electorate of Washington was not exceptionally anxious to register itself in legislative matters. It is further interesting to compare the proportions with those of the Oregon vote of 1912, when that commonwealth was exercising its direct legislative power for the fifth time and had before it thirty-seven matters for decision, in addition to the choice of various officials. Such a comparison shows that the thirty-seven measures in Oregon in 1912 received on the average a higher proportion of the total vote cast than was the case in Washington with its ten propositions and a new toy.

[1] An 18 per cent increase in two years is not abnormal for the following reasons: it was noticed in 1912 that a comparatively small number of women voted; this was not true in 1914; the population of the state has increased materially in two years.

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Measure	Total vote	Vote for	Vote against	Per cent of total vote	Per cent of Senator vote	Per cent of highest vote
Total Vote Cast . . .	381,643					
U. S. Senator	345,279			90.47	100.00	95.63
Initiative measures.						
Prohibition	361,048	189,840	171,208	94.60	104.57	100.00
		52.58%	47.42%			
Blue Sky	289,315	142,017	147,298	75.80	86.68	80.13
		49.08%	50.92%			
Abolish Bureau Inspection	284,962	117,882	167,080	74.66	82.53	78.92
		41.37%	58.63%			
Abolish Employment Agencies	306,598	162,054	144,544	80.33	88.79	84.91
		52.85%	47.15%			
First Aid	297,904	143,738	154,166	78.05	86.27	82.51
		48.23%	51.77%			
Convict Road Bill . .	295,531	111,805	183,726	77.43	85.59	81.84
		37.83%	62.17%			
Eight-hour Bill . . .	331,816	118,881	212,935	86.94	96.12	91.90
		35.82%	64.18%			
Referred by Legislature.						
Teachers' Pensions . .	311,407	59,051	252,356	81.85	90.19	86.25
		18.96%	81.04%			
Quincy Irrigation Project	291,380	102,313	189,065	76.34	84.38	80.74
		35.18%	64.82%			
Constitutional Amendment.						
Alien Land Ownership.	267,622	55,080	212,542	70.12	77.50	74.12
		20.58%	79.42%			

A second factor that calls attention to itself is the fact that one legislative measure, that for prohibition, received a vote larger by some 4½ per cent than was cast for United States senator, or, in round numbers, some 16,000 more votes. Two reasons apparently underlay this: in the first place this issue had been widely advertised; in all the Northwest, where woman

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suffrage exists, the prohibition forces have been working strenuously, especially in the last two years; in the second place the women voted. It was noted very often that women especially stated they went to the polls merely to vote "dry," and they did not care about the other issues of the candidates. The figures also show that it must have been equally true that many voted and did not exercise a choice in the matter of prohibition. It must not be gathered that the contest for senatorship was a tame one, and that a comparison with that total affords no true basis of judgment. In spite of the fact that Senator Jones won a reëlection by a comfortable plurality, there was a decidedly hard-fought campaign, and the Democratic faction entertained some hopes of overturning the Republican domination.[1]

Aside from the statement already made, that the vote for prohibition was large and that in addition the decision was close (52.58 per cent for, 47.42 per cent against), there is very little to state in way of conclusions reached from a study of the figures. Of the thirty-nine counties of the state only five gave a majority against the measure, but in almost all counties the contest was close. The three counties in which are the largest cities gave the following results:

	For	Against
King (in which is Seattle)	34,411	50,009
Pierce (with Tacoma)	16,249	19,131
Spokane (with Spokane)	20,853	19,705

The most surprising thing about these figures is that there should have been so large a dry vote, especially in Spokane county. In each case those portions of the counties outside the city limits are so sparsely populated as to make the figures stand practically for the municipal units. Of the other four counties (besides Spokane) where there was a "wet" majority, three were strictly rural with a small vote in each, and the fourth rural except for Olympia, the state capital, a city of something over 7000 inhabitants. An analysis by counties alone, however, serves only slightly in giving an adequate view of distribution;

[1] Vote distributed as follows: Republican, 131,403; Democrat, 91,780; Progressive, 83,401; Socialist, 27,775; Prohibition, 10,920.

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only an intensive study of the figures by precincts would give results with any meaning.

In the case of the Eight Hour Bill, second in number of votes and so decisively defeated, it is found that in but two counties was a majority given for the proposition; in one case a difference of 60 in a total of 2700 votes, in the second a difference of 824 in 5700. In the latter case, Kitsap county, located on Puget Sound, there is some lumbering, with a little manufacture of lumber, and fishing, along with the prevailing agriculture. In taking the list of counties where a considerable portion of the population is of the wage-earning class and where under ordinary circumstances such a measure would receive a large majority, the figures appear as follows:

	For	Against
Clarke County (with Vancouver; some lumbering and a small amount of manufacturing)	2,282	5,314
King (with Seattle; considerable mining in the eastern part)	33,724	45,682
Lewis (fishing and lumbering)	3,384	5,868
Spokane	10,189	27,890
Snohomish (with Everett; much lumbering and lumber manufacture)	8,945	9,468
Skagit (fishing and lumbering)	4,457	6,183
Whatcom (with Bellingham; fishing, lumbering and lumber manufacture)	6,500	8,540
Walla Walla (with city of Walla Walla)	1,943	5,965

This list includes those counties in which there are centers of population of any considerable size, and where labor, organized and unorganized, has weight. In the other counties, where some form of farming is the chief industry, it is not surprising that the vote against the measure was large.

The second measure which received a majority in its favor and which stood fourth in total number of votes cast was that to abolish private labor-employment agencies. It found strong support in King and Pierce counties, as well as in most of the counties where fishing, lumbering and lumber manufacture prevail. Spokane, the second city in the state, went against the measure by a four to three vote. The agricultural counties were about evenly divided, for and against, and in most of them the vote was fairly well balanced.

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One of the most surprising features of the election was the overwhelming defeat of the referred measure for establishing a retirement fund for teachers. Moreover, since this vote stood third in order of magnitude, it is evident that a great many people desired actively to register their protest against such a proposition. This is the more interesting since little publicity had been given the measure down to the eve of the election, when some very modest folders were circulated in its favor. Everywhere, however, in town and country alike, all appeared ready to annihilate the scheme. In King county only was there even a respectable showing for the measure, and here it was able to muster but 26,000 against 46,000 votes. Elsewhere there was a landslide of from fifteen to one to five to one.

All of those measures which appeared to have an issue which could be determined positively one way or the other received a comparatively large vote; conversely, in those involving technical points and where the question did not seem to be so easily answered by a "yes" or "no," the vote was comparatively light. This fact has appeared wherever the direct legislative scheme has been tried in the United States. The position on the ballot could have made little difference to the vote, for, while the prohibition title stood at the top of the column, the eight-hour title was buried in the middle of the list, and yet this received next to the largest number of votes. Probably there were too few measures to have the position make any material difference.

The election is over, and two measures ostensibly became law upon proclamation of the governor thirty days after their enactment at the polls, yet in both cases suits have already been filed to test their validity. In the case of the employment-agencies law, suit has been instituted in the federal court at Seattle, primarily on the grounds that the law is unconstitutional and in restraint of personal liberty. Since employment agencies still continue to take such fees as they are able to collect, it appears that there is a friendly agreement between the officials of the state and the agencies not to apply the rigors of the law till a decision may be had from the court.

With the prohibition act a somewhat more vigorous action

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was taken. On the night of November 30 counsel for a wholesale liquor concern in Seattle obtained from the superior court of Thurston county a temporary writ of prohibition restraining the governor from making proclamation of the act as law, as well as a restraining order to prevent the secretary of state from announcing the result of the vote. The petitioners alleged that both the prohibition act and the amendment to the constitution providing for initiative and referendum were invalid because of a number of technical errors, and that the prohibition act was unconstitutional in (1) violating personal liberty, (2) taking property without "due process," (3) interfering with interstate commerce.

On December 1 the superior court decided that the governor could proclaim the act as law "without prejudice to the rights" of the petitioners, denying the petition for a permanent injunction. The matter of illegalities alleged by the petitioners is to be probed by this court, and, whatever may be the outcome, it will undoubtedly go before the supreme court of the state, where the question as to whether the superior court judge had authority to render such a decision in the matter of the proclamation will be reviewed along with the other aspects of the case.

Verily, the way of an initiative measure in Washington is hard to travel.

LESTER BURRELL SHIPPEE.

PULLMAN, WASHINGTON.

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VALUATION OF PUBLIC SERVICE PROPERTIES

ACTUAL COST VERSUS COST OF REPRODUCTION

THERE are two fundamental steps in the regulation of returns upon public service properties: (1) to determine the valuation entitled to a return, and (2) to fix rates for services so as to provide a reasonable return upon the valuation.[1] The present paper will be concerned wholly with the matter of valuation. This subject has been discussed so extensively in recent years from various viewpoints that the present writer feels quite apologetic for venturing further in the discussion. Yet the matter is so fundamental in regulation and writers are so far from general agreement that the emphasis of certain points and views may perhaps be entitled to justification.

An important point in the present discussion is the distinction which should be made in this country between the *right* to regulate public utilities, which is a matter of fundamental law under the Constitution, and the *policy* of regulation, which is a legislative matter, and should be determined by Congress and the legislatures of the states. The right to regulate was first clearly set forth by the Supreme Court of the United States in the principle that any corporation or person devoting property to a public use "in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."[2] To state this principle was properly a judicial act, but to work

[1] In an earlier paper, the writer considered the problem of fixing rates based upon an official valuation, pointing out the difficulties of cost rate-making and suggesting, especially in the case of railroads, that the companies would better be permitted to fix the rates themselves according to commercial considerations, with the coöperation and supervision of a utilities commission, and that the net profits above a reasonable return might be taken by the state for public purposes. See POLITICAL SCIENCE QUARTERLY, volume xxx, p. 106.

[2] Munn *v.* Illinois, 94 U. S. 126.

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out a policy of regulation, to formulate a definite system of rules under which the proper control should be effected, is rightly the task of the legislative branch of our government.[1] More specifically, while the courts have determined the existence of the right to regulate public utilities and to fix rates, the actual fixing of rates, or determining the policy of regulation to be followed, has been the work of Congress and the legislatures of the states or of the properly constituted commissions—but of course it is the function of the courts to determine in any case whether the rates or regulations put into effect violate any of the property guarantees of the Constitution.

In line with the above well-recognized separation of functions in our government, emphasized again and again by the courts themselves, the courts probably have not intended, and certainly have not had the constitutional right, to determine in advance the method of valuation to be followed in regulation. To fix rules of valuation, whether cost of production, cost of reproduction, how accrued depreciation shall be treated etc., appears properly as a matter of policy to be worked out by Congress and the legislatures of the states, although the courts have the right to judge the reasonableness of such rules in their practical application.

But the legislative function as to valuation has never been directly exercised; neither Congress nor any of the legislatures of the states has ever given the force of law to any definite rules

[1] Public policy is entirely a matter of law, which in this country depends upon constitutional provisions, the common law, and statutory enactments. It is the function of the courts in any case merely to interpret the law, to declare what the law or policy is under existing constitutional, common-law or legislative provisions—although the line of demarcation between enactment and interpretation of law is not always clear. The law of the land is that the legislative branch of the government may establish any policy not contrary to the Constitution, even if it be utterly unreasonable and contrary to the general welfare, and under the police power legislation may even circumscribe materially various personal and property guarantees of the constitution. Courts may not in the guise of interpretation actually make law and so form the policy of the country. See United States *v.* Trans-Missouri Freight Association, 166 U. S. 340; Northern Securities Company *v.* United States, 193 U. S. 338, 352; Board of Park Commissioners of Des Moines *v.* Diamond Ice Company, 105 N. W. 205, 130 Iowa 608; Kittinger *v.* Buffalo Traction Company, 54 N. E. 1087, 160 N. Y. 388; City of Danville *v.* Hatcher, 44 S. E. 725, 101 Va. 530; a multitude of cases might be cited.

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to be followed in valuation. Rates or rate policies have been enacted, but no valuation rules have been determined. Consequently, in any given rate case a court has tried to be just under the circumstances, protecting property rights in line with such permissible legislation as has actually been enacted—not such as might be enacted. In the absence of a valuation policy, the courts have properly enough held in any case that the corporation has the right to earn a reasonable return upon the *fair value* of its property devoted to the public service. Each case has been judged according to its own circumstances, and the rule followed by the courts cannot be considered as establishing a policy *as such*. Congress or the legislatures of the states may properly at any time enact such a policy as may seem reasonable.[1]

In the multitude of rate cases the courts have pretty consistently emphasized actual, or present, or fair value upon which a corporation may legally earn a return.[2] They have enumerated the various matters that should be considered in reaching a specific amount in a given case, but the thing to be determined is *value*. Value, however, in the sense in which the term is generally employed by economists, is *worth* on the market with reference to sale or exchange. The value of a public utility property, therefore, is the amount of money or money's worth that it sells for, or might sell for; this would be determined by its earning power, which in turn would depend upon the rates in force. But since the rates are to be fixed in reference to the value, regulation would seem to be proceeding in a circle. If *value*, in this economic sense, were really to be made the basis of valuation, the regulation of return would obviously be impossible. Rates could never be reduced—unless the reduction could clearly be shown not to reduce the value of the property.

[1] But it must be admitted that if the legislative function should not be performed, in time the courts' rule as to individual cases will probably become, if it has not already, the assumed policy of valuation of the country.

[2] See the celebrated case, Smyth *v.* Ames, 169 U. S. 546. Other important cases are: San Diego Land and Town Company *v.* National City, 174 U. S. 756; Stanislaus County *v.* San Joaquin and King's River Canal and Irrigation Co., 192 U. S. 213; Willcox *v.* Consolidated Gas Co., 212 U. S. 41; Minnesota Rate Cases, 230 U. S. 355, 434.

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Still the courts have found some room for rate reduction even with value the rule for individual cases. But they have done this by contenting themselves in any particular case by stating the general principle and then departing from it in considering the specific valuation before them. If they really look for the actual value of the property, they must consider the business as a going concern and therefore cannot escape capitalizing the earning power. But apparently they have assumed that the value of the whole is equal to the value of the different parts, which, of course, is not true. In practice they have allowed any given valuation to proceed by chopping the property into as many units as may be conveniently handled, appraising each item independently, adding the different amounts, and making certain allowances for intangible matters. The final result, therefore, is a *cost* and not a *value* category. And, while the courts have not committed themselves to any considerations except fair value, actually they have admitted cost-of-reproduction valuation, requiring due allowance for accrued depreciation,[1] and for the most part that has come to be regarded as practically the established policy of valuation for the country.

But, as already stated, to determine a policy of any sort is properly a legislative act; the courts have presumably done the best they could in the absence of a policy. They have not wished to defeat all efforts at rate regulation, and yet when Congress and the legislatures have not provided a general rule, they could scarcely do otherwise than to insist upon present value as the amount entitled to a reasonable return—which strictly would stop regulation. It is fortunate that they have not been rigorously logical in their reasoning on value and practically have slipped into cost valuation. Regulation is one of the most important problems before the country at the present time, and it is unfortunate that no definite policy exists, or that the rules of the courts for individual cases should become the policy of the country. There is no reason why Congress with the advice of expert opinion should not formulate

[1] See Minnesota Rate Cases, 230 U. S., p. 457.

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definite rules of valuation to be applied to interstate utilities, and why the legislatures of the states should not do the same for intrastate utilities. Any policy thus determined, if at all reasonable, would probably not meet any constitutional objections on the part of the courts.

In the case of legislative determination of policy, presumably only two methods of valuation would receive serious consideration: actual cost and cost of reproduction, with due consideration in either case for accrued depreciation. While cost of reproduction seems to be favored more generally at the present time, this is probably true because it has been considered more nearly in harmony with the judicial view of fair value. But, let us repeat, the courts have probably not intended to formulate a policy, but simply to render justice where there was no policy. If this view be correct, then there is an open field for free discussion as to the most desirable method of valuation—or as to any other matter pertaining to regulation. What we all desire is the thing which will best serve the public, and under a broad interpretation of the police power any policy found to be best would necessarily receive the sanction of the courts. The question is, what is best? Thus untrammeled by court decisions, if the choice is narrowed down to cost of reproduction or actual cost, the writer believes that the latter would prove far the more desirable.[1]

I

Cost of reproduction presents too many difficulties and makes valuation a too indefinite matter. With any substantial change of conditions, whether a rise or fall in land values, a shift in prices of materials or a variation in wages of labor, there would obviously be a corresponding change in the valuation of the

[1] For an admirable discussion of the actual-cost basis of valuation, see R. H. Whitten, Valuation of Public Service Corporations, Supplement (1914), pp. 823–840. See also John M. Eshleman, Control of Public Utilities, *California Law Review*, January, 1914, p. 113, and John R. Commons before the Senate Committee on Interstate Commerce, 62d Congress, 3d Session, Report no. 1290, Valuation of the Several Classes of Property of Common Carriers, p. 93 ff.; also Commissioner J. C. Clements, in the same report, p. 209 ff., before the Committee on Interstate and Foreign Commerce of the House of Representatives.

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property upon which the company may receive a return. How may such a shifting amount be shown with sufficient definiteness so as to obviate the necessity of recurring physical appraisals? The actual cost of a property may be shown in the accounts with a fair degree of accuracy; but to show reproduction cost of a property is practically an impossibility. And it is largely for this reason that when a rate case is seriously contested, a physical valuation of the property must be made—which is always a costly and hypothetical procedure.

Effective regulation of public utilities is almost necessarily based upon a prescribed uniform system of accounts. Thus the Interstate Commerce Commission, the New York State Public Service Commissions, and the commissions of all the states seriously undertaking active regulation, have established uniform systems of accounts for the utilities subject to their jurisdiction. And the accounts assume throughout actual *cost* valuation, and practically could proceed in no other way. Thus, at any one time, the accounts are designed to show the actual cost of the property as a whole, also the cost of each class of property then in service; to show the securities that have been issued and are outstanding, the proceeds which they brought, and the cost of the property which they cover; and most important, show the cost of the service, and the return (on a cost basis) upon the corporate property. Through such accounting provisions, a commission can exercise fairly effective control over a company's operations. Proceeds from the issue of securities may be safeguarded so that they can be used only for construction or other desirable purposes. The integrity of the property may be fairly assured through the necessary repairs and the required provisions for depreciation. Most important of all, the cost of the service is shown, together with various cost ratios indicating the efficiency of operation. Without such definite accounting provisions, all based upon actual cost, effective regulation would seem all but impossible.[1]

[1] Even general commercial accounting, whatever good-will and other adjustments may be made, must be based upon actual cost in order to give the manager definite control of the business. It should be stated, however, that the cost figures shown in the property accounts of public service corporations are usually not reliable for ex-

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But when the accounts prescribed by the commission have been drawn up with care and have been enforced with energy, usually against the opposition of the company, and when a rate case comes up with the purpose of reducing the returns to the company, then the facts shown by the accounts are for the most part useless. The cost of the property as shown by the accounts has no special significance. To be sure, it will receive consideration, together with a multitude of other unimportant matters, but it has no determining consequence. The company has a right to a return upon *actual value*, which is usually deemed to be cost of reproduction, and the investment shown by the accounts is almost altogether disregarded. But if the "actual cost" accounts are necessary for the general control of the company, why should they not be used also to show the value upon which the return is allowed?

If the accounts were used as suggested, a rate case would involve no very great difficulties. The value upon which a return should be allowed could be fairly readily determined, and the rates or the return allowed could be fixed accordingly. But with the cost-of-reproduction method of valuation, the facts shown by the accounts serve little purpose. The proper valuation can be determined only by a physical appraisal, which means usually a large expense and in the end is not satisfactory because the value shown is hypothetical and not actual. Without real construction, how can you determine with even approximate accuracy the preliminary engineering, promotion and organization costs, the necessary materials and labor, prices and wages, the cost of superintendence, the required profits on construction, the cost of developing the business, the early losses of operation, and various other indefinite matters which usually receive consideration in a valuation for rate-making purposes? The result finally represents only an estimate and may be very unfair to the company or to the public, and is never really sat-

penditures prior to the establishment of the uniform system of accounts; but subsequent expenditures may for the most part be assumed to be fairly accurately reported. For this reason it is customary to require property installed after the introduction of the uniform system of accounts to be clearly separated from the earlier capital investments.

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isfactory to anyone. When actual cost can be fairly accurately determined and can be used as a definite and permanent measure of return, why resort to such an indefinite and shifting standard as cost of reproduction?

Ideally, the accounts should show definitely at any moment the value upon which the company has a right to a return. Practically this can be shown very readily if the valuation is based upon actual and not reproduction cost. Instead of taking the sum of the individual fixed-property accounts, with allowance for accrued depreciation and working capital, we may take the funded-debt and capital-stock and surplus accounts. In other words, we may look upon the liability and proprietorship instead of the asset side of the balance sheet. Obviously all the funds, including working capital, that have been turned into the various properties of the company, have been obtained through the issue of funded debt, capital stock, or the appropriation of income. Consequently the money actually put into the business is definitely shown by the sum of the balances of the funded-debt, capital-stock and surplus accounts.[1] The number of accounts involved are few, and no adjustment is necessary for depreciation of property. The amount of money which has been put into the business is a definite fact and may thus be definitely shown. Why are not the funds obtained through the issue of securities and the accumulation of income the proper valuation upon which the company has a constitutional right to a return? Why resort to mythical cost-of-reproduction figures?[2]

[1] Of course, the accounts should show the proper allowance for discount or premium connected with the par value of the securities outstanding. The term working capital as used here means the excess of current assets over current liabilities; thus working capital, too, is acquired through the issue of securities or the appropriation of income.

[2] If the issue of securities and the use of the proceeds are well guarded by the commission, the simplest procedure in determining the value upon which a return should be allowed would be to consider merely the contribution to the company by the stockholders—the capital stock and surplus accounts. Then the interest upon the funded debt might be viewed in the nature of operating expenses, and the net corporate income would measure the return to stockholders' contribution. This procedure would correspond with the view that the stockholders legally constitute the corporation; but from a broad view their contribution is no different than that of the bondholders; both, as will be shown later, are really *quasi* loans to the public.

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One of the most unsatisfactory features in a cost-of-reproduction valuation is the proper allowance for depreciation. While nearly everybody admits that operating expenses should be charged with depreciation, practical managers maintain that accrued depreciation does not lessen the company's investment. And they are right, providing depreciation charges have been made. The difficulty is that they usually do not see clearly the significance of the depreciation charge to operating expenses and the credit to depreciation reserve. If the wear and tear of property not made good through repair is charged to operating expenses, the result is that the net corporate income shown is reduced by so much, and therefore assets, which otherwise might be covered by surplus and taken for the payment of dividends, are funded with the company to make good the property displaced. The company's investment is thus kept intact, providing the depreciation allowance was correct. This is true whether the assets are set aside into a special fund, or are used for current purposes of the business, or are turned into additions and betterments of plant. At any time, then, the total actual cost of the property, including any special depreciation fund, less the total accrued depreciation, is the amount of the actual investment. But this is precisely the amount shown by the balances of the funded-debt, capital-stock and surplus accounts. The clearest way, then, is to look to these instead of the property accounts to measure actual investment. Unless there is an accumulation of surplus, these accounts do not change, whatever the accrued depreciation; therefore they furnish not only a more convenient measure for investment, but correspond more clearly with the business man's view of money put into the property.[1]

But as already stated, if we take cost of reproduction as the standard of fair value, there are no accounts which show definitely the valuation of the business for rate-making purposes. Consequently, not only is any allowance for accrued depreciation a very hypothetical matter, but the officers of the company

[1] There would be a small annual change in the net funded debt shown, because of the amortization of discount or premium.

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will not understand why it should be deducted from the value of the property. If a certain amount would be required to replace the property, why a deduction for depreciation? The difficulty is, in the cost-of-reproduction measure there is no way to determine the amount of money actually put into the business; the whole thing is hypothesis; you cannot tell what constitutes the integrity of the property; you cannot check off the valuation with the proceeds provided through the issue of bonds and stocks and through surplus appropriations. Under the circumstances it would seem to be the only reasonable procedure to deduct from the property valued at cost new, the hypothetical accrued depreciation, and regulate the return allowed accordingly. But it must be admitted that the results are indefinite; the public's interest must always be defended through strenuous opposition to company grabs. What advantage in this uncertainty? Why not adopt actual investment as the proper basis of valuation and avoid the difficulties of the other method? Why is not the money actually turned over to the public service the amount upon which the company has a right to return? [1]

There is a special difficulty in the treatment of depreciation under the cost-of-reproduction method of valuation. While it is desirable to include among operating expenses depreciation to cover original property cost consumed and not replaced by repair, some companies appear to be making much larger charges than necessary. This means in the first place that the operating expenses shown are too large and that the necessary rates for the service are correspondingly high, and, in the sec-

[1] The Supreme Court of the United States has definitely ruled that accrued depreciation must be considered in a valuation for rate-making purposes. City of Knoxville *v.* Knoxville Water Co., 212 U. S. 10, and Minnesota Rate Cases, 230 U. S. 457. An interesting recent discussion on "Depreciation and Rate Control," by A. A. Young, appeared in the *Quarterly Journal of Economics*, August, 1914, pp. 630–663. Professor Young holds that in fairness to investors no deduction should be made in a valuation for accrued depreciation when a property has been newly brought under regulation. Of course, regulation in any event disturbs investors; but since presumably rates were previously fixed at what the traffic would bear, also since *going value* would be allowed for any past deficiency in return, and since subsequent rates must provide or make possible a fair return on the valuation, just where is the injustice in making allowance in the valuation for accrued depreciation?

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ond place, that improvements and extensions may be made out of money contributed by consumers under pretended cost of service. If in the course of time it becomes clear that the depreciation allowances have been unreasonable and the commission then determines the proper charges and orders a reduction in rates accordingly, the corporation may successfully resist a reduction to the extent that a reasonable return be allowed upon all the property in the business, including the construction paid for out of the *unjustifiable* depreciation funds collected from the public. But no such unjustifiable gains could be made if the return were based upon money actually invested by the corporation. To be sure, operating expenses, and therefore the necessary rates for the service, might still be kept needlessly high for a long time, but the result would be merely building up the business out of public funds on which no private return could be obtained; sooner or later the benefit would go directly to the public. The actual investment shown would not be affected either by excessive or insufficient depreciation charges.

There are other difficulties with cost of reproduction besides the indefinite cost factors and accounting uncertainties. The method cannot be consistently followed without leading to absurd or unreasonable results. Does cost of reproduction mean the investment which would be required at a given time to replace a property in all essential respects like the one under appraisal? If so, then if the property is large, the work can be done on a large scale and important economies can be effected. But the existing property in all probability was created through relatively small piecemeal improvements and extensions whose unit costs therefore were necessarily larger than they would be now under large-scale operations. Consistent following of principle in this respect would manifestly work an injustice to the company, and practically it is usually found expedient to make an allowance in an appraisal for piecemeal development. Thus you have *hypothetical present costs* under actual past conditions of construction. This seems an inconsistent, even if fair, application of the reproduction principle.[1]

[1] Usually the allowance for piecemeal construction is made in an indirect way.

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We meet the same general difficulty in the matter of so-called *going value*.[1] Obviously, if we merely wish the cost of reconstruction of a property as it is in its present condition and location, no allowance logically should be made for various developmental expenses or early operating deficits, or lack of return on investment, which a new company would probably incur and might reasonably charge to capital account. Practically every company actually has incurred such outlays, and not to include them in a physical valuation would of course be unfair to the company. As may be supposed, *going value* has been allowed and it destroys the consistent application of a principle. Also, it furnishes no end of opportunity for disagreement between public and company officials—for what would be the costs if you don't incur them?

Likewise, if in the actual growth of the property, heavy expenditures for grading, filling in, removal of obstructions etc., were incurred, which in actual reconstruction would be avoided, the actual expenditures must be included in the valuation in reasonable fairness to the company, but in demolition of principle. Still other actual costs which would not be met in reproduction might be cited as reasonable to allow in a valuation, but destructive to a consistent following of the cost-of-reproduction idea. And to allow such items involves too many indefinite considerations, which result in friction between public and private interests.

This is done by the Wisconsin Railroad Commission by allowing higher unit costs in the appraisal than the company would have to pay if purchasing materials in large quantities. See State Journal Printing Co. *v.* Madison Gas and Electric Co., 4 W. R. C. R. 546-549. In some cases, however, allowance for piecemeal construction has been denied. See Pioneer Telephone and Telegraph Co. *v.* Westenhaver, 29 Okl. 437.

[1] Going value, or *going-concern value*, has been considered in a multitude of cases, and no general agreement has been reached as to its exact meaning or treatment in valuation. The tendency seems to be to allow actual early operating losses and actual costs incurred for developmental purposes. The latter are definitely allowed by the Wisconsin Railroad Commission, although it has shifted the method of determining the amount. See Superior Commercial Club *v.* Superior Water, Light & Power Co., 10 W. R. C. R. 741 ff.; City of Milwaukee *v.* Milwaukee Electric Railway & Light Co., 11 W. R. C. R. 122 ff. Early actual operating deficits not made good by excessive profits have been allowed by the court of appeals of New York. See Kings County Lighting Case, 210 N. Y. 486 ff.

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Now the other way about, there are various expenditures which would be incurred in present construction but which were not made as the property was actually developed. Thus, there may be paving to remove and replace, gas and water mains to shift, excavations to make, supports to construct etc. Consistent theory would require the inclusion of such items in a valuation, and in this instance company attorneys eloquently urge the wisdom of following principle to its logical conclusion. But the objection has force—if no cost has been incurred, why should there be a value entitled to a return? And, once more, in justice principle must be sacrificed to the dictates of practical considerations. Suppose the city paid for existing paving but in new construction the cost would fall upon the company; what allowance in the valuation? Suppose public contributions had been made to the original cost of construction, shall they be included in the present valuation? How do such matters fit into the cost-of-reproduction theory?[1]

A peculiarly perplexing difficulty is met in the appraisal of land. In principle it should be rated at its present cost—but what is that cost? If real estate necessary to the utility has advanced in price, then consistently with the reproduction-cost theory, the courts allow the company the benefit of the advance, although it represents actual cost no more than does paving originally put down by the city. Why should the company be entitled to a return upon the increased valuation? Suppose, the other way about, real estate had declined in value, but the company's land is necessary to utility operation, would it be desirable or fair that the physical valuation should be fixed at present prices? But, suppose that in the case of real estate at least we follow reproduction-cost consistently up or down, then where place limits to costs which would be incurred? Under existing conditions the property belongs to the company, so how may its cost be determined under the assumption that the company did not own it and were attempting to acquire it? Shall we

[1] The reproduction-cost of pavement, the original cost of which was not borne by the company, has been quite generally excluded from a valuation for rate-making purposes. See Des Moines Gas Co. *v.* City of Des Moines, 199 Fed. 208; Kings County Lighting Case, 210 N. Y. 494.

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take the market price of adjacent land? If so, shall we allow any special utility price? Any provision for buildings that might be on the land and for their removal? Now these items would certainly enter into costs if a company were putting up an actual plant; so, logically, why should they not be allowed? Still, wisely, the Supreme Court of the United States, otherwise admitting a reconstruction-cost valuation, has refused to allow them because of their extremely hypothetical and intangible nature. And what is the reproduction cost of land which you own and need in your business?[1]

The truth seems to be that while the courts have practically admitted the principle of reproduction-cost valuation under the guise of fair value, they strike so many insurmountable difficulties and injustices in a consistent application that actually they are forced again and again to actual-cost considerations. But if it is unreasonable in some instances not to allow a return for costs which actually were incurred, is there not at least a presumption that it is unreasonable throughout? Or if it is undesirable in some cases to allow a return on costs which were not incurred, why permit any such costs? Are they not all unreal precisely as those which have been excluded? After all, at bottom, does not the average court, or the ordinary person, feel that it is the money actually put into the property upon which the company has a right to a return? Why upon any other? Really, is not that the property which has been devoted to the public service?

II

The objection may be made to the original-cost method of valuation that comparatively seldom in rate cases is the original cost of the property known. The plant may have been constructed long before serious regulation was attempted, and the construction records may have been lost or destroyed, or detailed accounts may never have been kept. The question may therefore be fairly raised: in the absence of reliable data, how can actual cost be taken as the proper basis of valuation?

[1] See Minnesota Rate Cases, 230 U. S., p. 445 ff., for the finally authoritative and a very lucid discussion of land valuation.

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In the case of old properties and in the absence of records, of course, the original-cost method cannot be altogether satisfactorily applied. In such cases, and they predominate in number, some sort of approximation must be made, and at times, perhaps, the more satisfactory results may possibly be secured from a reproduction-cost valuation. Still, as already pointed out, reference must inevitably be made to costs actually incurred which in reproduction would be avoided. In any event, an appraisal of a large property is a difficult task, but the question is whether, in general, it cannot be worked out fully as satisfactorily and more consistently in principle by the original-cost as through the reproduction-cost method. If an inventory be taken and the age of different parts of plant be fairly determined, would it be any more difficult to fix a reasonable valuation by inquiry as to the money which probably was actually put into the property than by calculating the amount which probably would have to be expended if construction took place at the present time? In either case, the result would be an estimate based upon various hypothetical considerations. In most cases it would probably not be more difficult to obtain past prices of labor and materials than present prices, and there would always be at least some records to throw light upon actual expenditures.

We may admit, however, that for construction antedating regulation, the reproduction-cost method may be quite as satisfactory as original cost. But when active regulation has once been established, including an effective classification of accounts, all subsequent money actually put into the property will be correctly recorded, and for such investments the original-cost method may be satisfactorily applied. As a practical procedure it would be desirable, after each rate case, when a detailed appraisal of the property has been made, to take the established valuation upon the books of the company as the measure of actual money invested, and then for the future to look to the accounts for valuation entitled to a return. Still, further, when active regulation has once been undertaken through legislative enactment, it would usually be desirable, although it is never done, to establish immediately for each company an official

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valuation, so far as possible based upon actual investment, upon which a return will be allowed. Then, for the future, additional investments would be accurately measured and further indefiniteness in valuation would be avoided. To be sure, such an appraisal would be an expensive procedure, but so is regulation in general, and the costs involved would probably be justified by the greater certainty and precision with which regulation would be effected.

In this connection, the present valuation of interstate railroads by the Interstate Commerce Commission is exceedingly interesting. If, after the valuation is completed, the actual-cost principle should be adopted for the future, then the property schedules as drawn up by the commission could be taken upon the books of the companies; subsequently further investments would be recorded at cost, and the proper valuation upon which a company has a right to a return would always be a definite matter. But if the actual cost is not adopted the present physical valuation will have little final importance. In very few years, when various extensions and improvements will have been made, and when prices will have shifted, then there will again be the uncertainty in any case, as at present, as to the fair value of the property. The desirable procedure is to make a physical valuation of all public-service properties, like that of railroads, and for the future to follow the actual-cost principle.[1]

Another objection that may be raised with considerable force against the original-cost method is the difference in valuation that would be placed upon old and new properties when a significant change in price level has occurred between the dates of construction. If we take actual investment as the proper basis

[1] It is interesting to note that in the recent classifications of accounts both in the case of steam railroads and electric railways, the Interstate Commerce Commission has discontinued the earlier distinction between fixed property investments made prior to the installation of the prescribed accounts and all subsequent investments. The old classification clearly distinguished between the prior unknown costs and the later definitely recorded investments. With the abandonment of this distinction, there is a presumption that after the physical valuation of railroads is completed, the Interstate Commerce Commission will require each company to take upon its books the property schedules as determined in the appraisal. This certainly would be a highly praiseworthy procedure, which would justify the valuation.

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of valuation, then even if two properties are essentially alike in size and physical condition, the value upon which a return will be allowed may be very different in the two cases. The question may fairly be raised, why should they not be entitled to equal returns from the public? This question suggests the chief logical basis or reason for the reconstruction-cost theory. If there were not too many serious difficulties involved, perhaps it would be desirable to allow the same return in the two cases. It is practical considerations, however, which determine the principle of best social procedure.

The inconsistency in valuation of old and new properties, when there have been significant price changes, has its clear counterpart in other accepted business practices having the full sanction of law. For example, long-time loans contracted fifteen years ago when prices were low had their principal determined by the amount of money received at the time and had the rate of return fixed upon that valuation. With the subsequent rising prices no adjustments were made either in the principal or the return provided in the loan contract; consequently the lender has lost in purchasing power; he receives the number of dollars agreed upon, but he gets less real value than was involved in the terms of the loan at the time of enactment. Now ideally it would probably be desirable to adjust the repayment of the loan, also the payment of interest, to the change in price level, so that neither borrower nor lender would gain from any general shifting of prices. But such an adjustment could not possibly be carried out in everyday affairs because of the indefiniteness of the appraisal that would be involved in any given contract. How could the change in purchasing power of money be measured with sufficient precision, so as to show exact equivalence of loan and return so that borrower and lender would both be contented? Would not an attempt at such adjustment result in general dissatisfaction, disagreement and litigation between the contracting parties?

The same line of reasoning applies to the valuation of public-utility properties. Ideally it perhaps seems desirable to adjust the amount of the investment to changing prices and shifting

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conditions of business, but the serious difficulties involved in determining the proper valuation in any case make such an adjustment impracticable. If we wish effective regulation for the future, we must provide for definite valuation which in any case could be taken from the accounts of the company and would not require a physical appraisal of the property.

An objection may be made that in most instances the investors had considered the possible increase in valuation as consideration for making the investment, and therefore the actual-cost rule would be unjust to past investments, although it might work satisfactorily enough for future capital expenditure. In a sense, the objection appears justifiable, but the same reasoning would make any effective rate-regulation impossible, for in most cases the investments were made before regulation was attempted and the freedom to fix rates according to commercial conditions was an important consideration for making the investment. If we are to regulate, the procedure should be definite. Many investors have suffered because of regulation, and many others would undoubtedly lose through the application of the proposed method of valuation. But the method appears nevertheless as the reasonable one to follow, providing we wish effective regulation of return. And, after all, if investors are allowed a return upon money actually put into the existing property, with allowance for accrued wear and tear and obsolescence, there can be no very serious injustice. It must be remembered that for the most part up to the present, rates have been based upon what the traffic would bear, so that successful properties have been amply rewarded and there can be no injustice in future restriction—while poorer properties will still have the chance to earn a fair return if they can.

III

We have used long-time loans to illustrate the practical necessity of adopting actual cost as the basis of valuation of a utility property. But the idea of long-time loans may be used advantageously also in another connection. The kinds of properties which we have been considering are legally viewed as *quasi-public;* they are devoted to the public service and are invested

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with a broad if not clearly defined public interest. They essentially belong to the public, although they are constructed out of funds provided by private investors and are immediately operated by private corporations under public control. Then, why not consider money invested in such property as a *loan to the public?*

Private operation is after all only a matter of expediency. Utility investments, even under present law, constitute essentially public and not private property. The best general view, therefore, although this conception has not received any definite legal sanction, is to regard money put into public utilities as money lent to the public, and to consider that as a lender the corporation has a right to a return upon the loan. According to this view, the property is really owned by the public and is managed in its behalf, but it represents borrowed capital. Stockholders as well as bondholders would thus be considered public creditors entitled to a return, but to nothing more, upon the amount of their loan.

The conception just presented is by no means visionary. It has been clearly suggested by various judicial dicta defining the public rights versus private rights in public utility matters. Perhaps the most striking suggestion in this connection was recently made by the court of appeals of the state of New York.[1] In harmony with fairly generally accepted theory, the court held that the corporation had a right to a reasonable return upon its property, but that any actual deficiency in such reasonable return would create a claim against future operations, and that all past deficiencies would form a cumulative claim against the public. In other words, the court allowed deficiency in return to be capitalized and added to the investment. Conversely, however, if the corporation had actually received more than a reasonable return, the court's language implies, although it does not clearly say so, that the excess might work to reduce the investment upon which a return would be allowed. Thus

[1] See Kings County Lighting Case, 210 N. Y., p. 486 ff. The court uses language in the opinion which clearly implies the actual-cost theory of valuation, e. g., p. 490: "We are dealing, not with exchange values, but with the value upon which the company is entitled to earn a return."

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the company would have a right merely to interest upon actual investment cost and nothing more; if less is received, the investment would be increased (assuming reasonably efficient management), if more, the investment would be diminished. What more, then, is the investment than merely a loan to the public?

If we should regard public-service investments fundamentally as public loans, or quasi-public loans, then the actual-cost method of valuation would appear all the more sensible. A corporation, then, in harmony with the law of loans, would have a right to a return upon the amount of the loan as originally made. Obviously no distinction would be made whether the funds were provided by the corporation through the issue of bonds or of stocks; the money actually put into the property would determine the value upon which a return would be allowed.[1] But even now the valuation upon which the bondholders get a return is definitely fixed by the amount of their contribution, and there is no particular reason why the contributions of the stockholders should be treated in a different way. Fundamentally, does it make any difference by what particular method funds are gotten for the public service? The bulk of new funds are now provided by bondholders, who accept a fixed valuation upon which they receive a return. Is there any reason to believe that the stockholders would refuse to make future contributions if for stocks, too, the valuation were definitely fixed?

It is, of course, necessary to make public-utility investments sufficiently attractive so that private funds will be provided for necessary or desirable extensions and improvements in service. But there seems to be no reason why the funds should not be furnished as readily if the return were based upon the actual

[1] In this connection it may be suggested that the tendency in commission control of utilities is to minimize the distinction between the capital stock and the funded debt of a corporation; both are considered capital liabilities, and the commissions feel a certain responsibility for them. In the income account, interest on funded debt is not included in operating expenses, but is considered a return upon property, of the same nature as the net corporate income available for dividends upon stock. And, from the public standpoint, there is no particular reason why the interests of the two classes of securities should not be viewed as identical.

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contribution as upon future prices and conditions of operation. At the moment of providing funds the investor considers the return upon the value then to be paid whether he takes stocks or bonds. The return offered in any case must compete with the attractions in other lines of investments. The valuation upon which the competitive different returns are considered is that of the cash funds in hand actually seeking investment. If the funds go to the public service, is there any more reason than if they had gone as private loans why their subsequent valuation should be changed with shifting business conditions? Why not make the investment a definite fixed matter?

If sufficient funds are to be obtained for the growing and changing public service, obviously it is the return allowed upon the investment which is the important consideration. Present practice in this regard appears as unsatisfactory as in the matter of valuation; it is indefinite and shifting; the return must be reasonable, but whether that be five per cent, eight or ten, and upon what, depends upon the circumstances of the case before the commission or the court. While the courts realize that the rate of return must be large enough to attract the necessary funds, they seem to view it in relation to *existing* and not in reference to *prospective* investment. But obviously as to all past money turned to the public service, there is no reason why the rate of return allowed should be changed with varying market conditions; funds already in the service cannot be withdrawn except according to the loan contracts. The fundamentally important consideration determining the flow of new funds into the service is the return offered upon new contributions. If that is large enough, needed resources will be provided whatever the return upon past actual investments.

The important question raised here is, why not place public-service investments throughout upon the basis of loans? Then both valuation and return would be definitely fixed by contract at the time the funds are turned over to the public use. Subsequently, even if prices have risen and the general rate of interest has advanced, the public liability would remain fixed according to past contractual stipulations. But if new funds are needed, then the returns offered obviously would have to be

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according to existing market conditions, or the money needed would not be provided. According to this view, the reasonable return to which utility investors are entitled at any time would be a rate just large enough to secure the desired funds. This rate would not be a *constitutional* matter, but one of agreement between the private lenders and the public, and when the agreement has been made its provisions should control. It really seems absurd that the courts should be confronted with questions of valuation and return, as if these were matters capable of abstract constitutional determination. Both should be definitely agreed upon at the time the money is turned over to the public use. They should properly be considered as *contractual* and not *constitutional* matters.

But if the valuation and returns are to be definitely restricted in the way suggested, then the question may be raised, should they not justly also be guaranteed? While this conclusion does not necessarily follow, it may very well be that in further experience with regulation we shall find the guarantee of return a desirable policy. It is a matter of expediency, whether the public better bear the entire risk of utility investments or share it with private investors. The policy which we finally choose will of course determine in a large measure the rate of return at which new funds may be obtained. For the immediate future, however, no guarantee of return is likely to be made; each utility perhaps better be required to stand on its own feet, not resting partly upon the general public credit. With such policy the contractual return would be allowed in so far as a given utility can earn it; the final risk of the business would still fall upon private investors. Such a policy would not differ much from the usual mortgage-loan contract; the lender receives the stipulated return only in accordance with the guarantees provided in the mortgage, and these are dependent upon the financial stability of the particular business. But, of course, the utility would be recognized as a natural monopoly and would be protected from competition.

The objection may be made to the proposed definite fixing of valuation and return—viewing all utility investments as public loans—that this would practically mean or would speedily lead

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to public ownership. In a broad and rather loose sense we of course already have public ownership, and it may be that complete public ownership and operation will furnish the best solution of the utility question. Successful regulation involves many serious difficulties, but to return to past *laissez-faire* conditions is out of the question. Reasonably effective regulation, which does not as yet exist anywhere in the country, will mean tremendous expense added to the costs of operation, and it produces constant irritation between operating officials and the regulating bodies which can scarcely work for the general welfare. Also in many ways effective regulation would diminish incentive to economical and efficient management. There is little doubt that the question of complete public ownership and operation of utilities versus regulation will become a paramount issue in American politics in the very near future.

But whether we shall finally turn to public ownership of utilities will be determined largely by the balance of advantage that the plan offers as compared with the present and other possible methods of operation. The proposed method of fixing valuation and return can have no very decisive influence upon the final determination, except in so far as it may affect prevailing views of public rights in so-called private property and industry. Its sole purpose is to make regulation more definite and effective than seems possible under present procedure.

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THE DISTRIBUTION OF SECURITIES IN THE FORMATION OF THE UNITED STATES STEEL CORPORATION

DURING the period from 1898 to 1901, when the formation of industrial consolidations was most active, comparatively little attention was given, either by the promoters, the underwriters or the owners of the constituent properties, to the important economic problems connected with the effects of the various consolidations upon the relative status of the parties in interest. In certain cases complaints were made in conferences, and occasionally in the financial press, that the owners of important plants were unfairly treated in the distribution of securities, but in general the answer to such charges, "If you don't like the terms you can stay out," was considered a sufficient justification for any plan that proved acceptable to a sufficient number of interested parties to ensure its adoption.

Attention in a large way was first called to the seriousness of the problem in the Harriman suit against the Northern Securities Company, the Harriman interests asking for the return of the securities exchanged for Northern Securities stock, rather than a pro-rata distribution as proposed by the directors and approved by the stockholders. After the case had been exhaustively argued, the Supreme Court refused to sanction the petition of the Harriman interests for several reasons—one of them being the difficulty of preserving the equities in the situation between the Hill-Morgan and the Harriman groups by the use of the direct-return method. The pro-rata method was approved, one of the important reasons being that in this way all parties at interest must of necessity receive an equitable interest in the several independent companies created by the order for distribution. The continued success of the United States government, acting through the Department of Justice and the courts, in forcing the dissolution of many of our more important consolidated corporations, has given more than an academic interest to the problems necessarily connected with

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the equitable distribution of securities, both in the process of formation and in that of disintegration.

Already the Northern Securities Company, the powder consolidation, the Standard Oil Company and the American Tobacco Company have been disintegrated and their securities distributed by the pro-rata method on order of the Supreme Court. A decision against the Harvester trust has been rendered and its dissolution is now in process. The suit of the United States government against the United States Steel Corporation, asking for its dissolution, is being expedited under the law with all possible speed. Several other cases are either before the courts or have been settled without litigation by conferences between the representatives of the corporations and of the government. Under these circumstances a more exact knowledge of the process by means of which consolidations are formed is a necessary prerequisite to an understanding of their economic effects upon shareholders, whether such aggregations of capital are permitted to remain intact or are forced to disintegrate by order of the courts.

I

In general there are three fairly well defined methods in more or less common use for the distribution of securities in the formation of consolidations. The first in practical importance may be called the bargain method; the second, the Moore method; the third, the scientific method.

When operating under the first plan, the promoter provides for a maximum of securities to be issued by the central corporation and then enters into contracts or agreements to exchange the securities authorized for the securities of the companies which it is hoped to consolidate into one company on the best terms possible. The more favorable the rate of exchange in any particular case, the larger the share of securities which will remain in the hands of the promoter. Since some of the owners of the various properties included in the plan of consolidation are shrewder at bargaining, or more favorably situated for independent action, it necessarily follows that those thus situated invariably obtain in the distribution of securities a

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larger interest in the consolidation than the intrinsic value of their plants would justify.

The Moore method was devised by Mr. W. H. Moore and was used by the Moore brothers, W. H. and J. H., in the American Tin Plate Company, the American Sheet Metal Company and several other consolidations promoted by them during the period of active consolidation. The first step in the Moore plan is to secure cash options on all the properties that are considered desirable for the consolidation, so far as such options can be obtained at acceptable figures. A plan for the financial organization of the consolidation is then prepared. Next, arrangements are made with underwriters to supply the necessary funds to take up all the options at the appropriate time, or such portion thereof as the promoter judges will be required. Finally, each owner of securities in the companies on which cash options are held is offered cash or securities in the new corporation at his option. If all the option-givers should choose to take their pay in cash, there would necessarily be required large resources in ready funds to ensure the success of the promoter's plan. Generally, however, the option-givers have preferred to take securities, and the promoters using this method have so arranged their financial plans as to favor this inclination. According to the report of the Industrial Commission, it was customary to offer each of the option-givers seven per cent cumulative preferred stock equal in amount to the face value of the cash option, and a like amount of common as a so-called "bonus." The offer of the promoters to give two hundred dollars' worth of stock instead of one hundred dollars in cash appeared so attractive, on its face, that the owners generally took the securities rather than the cash. The requirement for cash was thus reduced to a small fraction of the values involved in the deal. It was usual, as would be expected, for the promoter to issue common stock in liberal quantities, and the total amount in excess of the preferred was retained in his own hands as a reward for his services. In the case of the American Tin Plate Company, 10/28 of all the common stock issued was thus retained.

The third method, denominated the scientific, exists in the

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world of finance as an ideal rather than as an actuality.[1] Briefly, it consists in issuing securities to the owners of the constituent properties in exchange for their interests in such a way that each will receive his proportionate share in the increased earnings in case of success, and share also his proportion of the losses in case of failure. This object is accomplished by issuing (1) preferred stock equal in face value to the tangible assets with such dividend rate, conditions of issue and of redemption as will make its market value equal its face value, and (2) common stock in proportion to the surplus earnings contributed by each company over and above the requirements for the preferred. To find the amount of preferred and common to be issued and assigned to the several owners, it is necessary (1) to make an appraisal of the tangible assets of each of the companies, keeping the results separate, and (2) to have an accounting for the purpose of ascertaining the net earnings of each of the several companies, extending over a period of years sufficiently long to be representative of actual earning power. The common stock may be issued to any convenient amount, preferably slightly exceeding the preferred, so that control of the corporate policy of the central corporation will be in the hands of those holding the contingent interests. The important questions connected with the common stock relate to its distribution. To illustrate: it is proposed to consolidate two companies, A and B, with assets and earnings as follows:

	NET ASSETS	NET EARNINGS	RATE PER CENT
A	$10,000	$1,500	15
B	20,000	2,000	10

Company C is organized with $30,000 7 per cent cumulative preferred stock and $40,000 common stock. Stockholders in Company A are allotted $10,000 of the preferred stock and the remaining $20,000 is assigned to the stockholders of Company B. The promoter, it may be assumed, will retain $10,000 of the common stock to pay the organization expenses and as

[1] Mr. Charles R. Flint used a modified scientific plan in the promotion of both the United States Rubber Company and the Rubber Goods Manufacturing Company. Report of Industrial Commission, xiii, pp. 38, 48; N. Y. Senate Report No. 40, p. 452 ff.

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compensation for his services. The remaining $30,000 of common stock will be divided as follows:

	NET EARNINGS	REQUIREMENTS FOR PREFERRED	EXCESS EARNINGS	COMMON
A	$1,500	$700	$800	$17,143
B . . .	2,000	1,400	600	12,857
				$30,000

Under this method of distributing securities, the owners of the constituent companies will share in the earnings in case of continued operation in the same proportions as before the consolidation took place, and, provided the promoter has been allotted stock only for actual benefits conferred by his efforts, in the same amounts. In case of dissolution, on the other hand, the former owners will receive in the distribution of assets in proportion to the value of the tangible assets contributed. In either contingency, the relative economic positions of the parties at interest will be maintained on a parity.

II

The relative merits of these three plans will appear more clearly from an examination of the results which would flow from their adoption in the formation of an actual consolidation. The United States Steel Corporation affords an excellent opportunity for such a comparison.

This corporation, a holding company, was formed in March, 1901, by the consolidation of the following corporations: the Carnegie Company of New Jersey, the Federal Steel Company, the American Steel and Wire Company, the National Tube Company, the National Steel Company, the American Tin Plate Company, the American Steel Hoop Company, and the American Sheet Steel Company. Later in the same year the Steel Corporation, by an exchange of stock, acquired control of three other companies: the American Bridge Company, the Lake Superior Consolidated Iron Mines, and the Shelby Tube Company. It also purchased outright a one-sixth interest in the Oliver Mining Company and the Pittsburgh Steamship Company, and the Bessemer Steamship Company. In addition to

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the above companies, all of which became constituent parts of the United States Steel Corporation in the spring of 1901, the steel corporation acquired control of the Union Steel Company in 1902, the Clairton Steel Company in 1904, and the Tennessee Coal, Iron and Railroad Company in 1907.

These companies belonged to two distinct groups: (1) those producing crude and semi-finished steel for the trade and the heavier finished steel products, and (2) those using the semi-finished steel for the purpose of manufacturing articles for more direct consumption. In the former group were the Federal Steel Company, the National Steel Company, and the Carnegie Company. In the latter group were the American Tin Plate Company, the American Steel and Wire Company, the National Tube Company, the American Steel Hoop Company, the American Sheet Steel Company, the American Bridge Company, and the Shelby Tube Company. The remaining companies, acquired in the spring of 1901—the Lake Superior Consolidated Iron Mines Company and the Bessemer Steamship Company—were engaged in mining iron ore and transporting it down the Great Lakes to the iron and steel mills of the Pittsburgh and Chicago districts.

From the financial point of view the above-named companies represented, before the consolidation, five distinct groups of interests, as follows: (1) The Morgan group, including the Federal Steel Company, the National Tube Company, and the American Bridge Company; (2) the Moore group, including the National Steel Company, the American Tin Plate Company, the American Sheet Steel Company, and the American Steel Hoop Company; (3) the Carnegie group, owning the Carnegie Company and its subsidiary interests, including the Frick Coke Company, the Bessemer and Lake Erie Railroad, and certain steamship lines and docking facilities on the Great Lakes; (4) the Rockefeller group, owning the Lake Superior Consolidated Iron Mines Company, with large holdings of iron mines in the Lake Superior district and certain railway and steamship lines built and acquired for the purpose of facilitating the transportation of the crude ore to the market; (5) the Gates group, controlling the American Steel and Wire Company and its affiliated interests.

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The consolidation movement in the iron and steel industry began as early as 1889, when the Illinois Steel Company, later a constituent part of the Federal Steel Company, was formed by the union of two companies, the North Chicago Rolling Mill Company and the Union Steel Company, and soon after acquired the property of a third, the Joliet Steel Company. This merger was followed in 1891 by the consolidation of the Lackawanna Iron and Coal Company and the Scranton Steel Company into the Lackawanna Iron and Steel Company. At about the same time Laughlin and Company, Ltd., and Jones and Laughlin, Ltd., united to form the well-known Jones and Laughlin Company. In 1892, two important steps in the consolidation movement were effected: first, the organization of the Carnegie Steel Company, Ltd., a partnership bringing into closer and more efficient union the Carnegie and Frick properties and the various affiliated companies which they had been acquiring during the previous decade; second, the formation of the Consolidated Steel and Wire Company, a union of three competing companies, which later formed the center of the American Steel and Wire Company when the latter company was promoted in 1899.

During the period from 1892 to 1898, the years of the panic and those immediately succeeding it, there was almost no change in the financial organization of the various steel and iron companies. In the year 1896 an event of the profoundest importance occurred—the execution of a contract between the Carnegie Steel Company and the Lake Superior Consolidated Iron Mines Company, by which the latter agreed to furnish at a royalty of 25 cents per ton a considerable portion of the former's requirements. This partial union of the Carnegie and Rockefeller interests was everywhere regarded as a formal declaration on the part of the former that they were prepared for any competition that might arise. The step just referred to was followed by others of the same general nature, and in the course of the next two years the Carnegie Company secured control by lease of a large reserve iron-ore tonnage. The *Engineering and Mining Journal*,[1] in commenting on the

[1] January 2, 1897.

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situation, remarked that "we have had pools and combinations without number in the iron market in this country but never before a position like this, in which a single company could absolutely dominate the trade and make any combination which can be formed simply the register of its own wishes." The Carnegie-Rockefeller contract was followed in 1898 by the formation of the first of the great consolidations—the Federal Steel Company—a company uniting the Illinois Steel Company previously referred to, the Minnesota Iron Company, with large holdings of iron ore and extensive transportation properties, the Lorain Steel Company of Ohio, the Johnstown Steel Company of Johnstown, Pa., and the Elgin, Joliet and Eastern Railway. During the years 1899 and 1900, the Moore brothers, W. H. and J. H., formerly connected with the Diamond Match Company, entered the field as the promoters of four companies known as the Moore group, which comprised the National Steel Company, the American Tin Plate Company, the American Steel Hoop Company, and the American Sheet Steel Company. The first company manufactured crude steel and heavy steel products; the other three were important consumers of the above products. During the same period the remaining Morgan companies were organized—the first, the National Tube Company in June, 1899, the second, the American Bridge Company in 1900, each being made up of a considerable number of formerly competing companies. As to the two other companies which entered the steel corporation, the Carnegie Company, while not a consolidation in the ordinary sense, had for many years been buying up competitors and integrating many of the companies which it found convenient as furnishers of raw materials, while the Shelby Tube Company was a fairly complete consolidation of the leading manufacturers of seamless tubing. It was, however, dependent upon the manufacturers of crude steel for the material which formed the basis of the drawn tubing.

The formation of the several steel companies above described was, however, but a first step in the consolidation of the steel industry. Almost immediately after the fundamental consolidations were effected, the natural effects of such a movement

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began to be felt. First, the National Tube Company began the erection of blast furnaces, thus depriving the Carnegie Company of one important consumer of billets and other heavy raw materials used in the manufacture of tubing. The Carnegie Company had for some time been planning extensions, and as a direct result of the action of the National Tube Company it was decided to erect a modern plant at Conneaut Harbor, where it was thought the cost of manufacturing would be reduced to a minimum.[1] Second, as a result of a long-standing controversy between the Pennsylvania Railroad and the Carnegie Company over rates, the latter had determined to build a new, low-grade, short-line railroad from Pittsburgh to tidewater via the Western Maryland Railroad. The plans as proposed called for the construction of 156 miles of railroad connecting the Union Railroad with the Western Maryland at Cumberland, thus freeing Pittsburgh from the monopoly of the Pennsylvania, and giving the district, as Mr. Carnegie said, "competition of railroads."[2] Third, early in the fall of 1899, Mr. Charles M. Schwab of the Carnegie Company spoke before a company of distinguished business men in New York city on the advantages of consolidation in the manufacture and marketing of steel.[3] Morgan sat at his right and among the men present were Harriman, Carnegie, Phipps and seventy or eighty others.[4] Fourth, Mr. Morgan, whose tube plant was threatened by the plans of the Carnegie Company and whose interest in railroads was a dominant factor in all his plans, began to give the situation more serious attention. According to both Mr. Gates and Mr. Schwab, Mr. Morgan discussed the situation with the former and then, through the instrumentality of Mr. Gates, sent for Mr. Schwab for the purpose of going over the project in detail. A meeting was arranged and the matter was discussed at considerable length and after a day or two Mr.

[1] Testimony of Mr. Carnegie. Hearings before the House Committee on the investigation of the U. S. Steel Corporation, page 2445 ff. Hereafter referred to as the Stanley Report; *ibid*, pp. 40, 1311 ff.

[2] Gates, Stanley Report, p. 40. Carnegie, *ibid*, 2445 ff. *Century Magazine*, August, 1908.

[3] Testimony of C. M. Schwab, Stanley Report, p. 1278. [4] *Ibid.*, p. 1278.

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Morgan, having been convinced of the desirability of the project, requested Mr. Schwab to see Mr. Carnegie and to obtain a price on the Carnegie properties. This was done within a few weeks, the price set being $420,000,000, payment to be made in cash or five per cent bonds.[1] Mr. Morgan then consulted Mr. Gary.[2] After a full discussion of the plan, a conference was arranged with the principal directors in the Federal Steel Company, including Ream, Rogers, Mills, Porter and Field. Here again the desirability and practicability of the proposed consolidation was carefully considered and after such consideration, despite the opposition of Mr. Porter and others, the project was affirmed and Mr. Morgan consented to act as the manager of an underwriting syndicate to furnish the financial backing that was required.[3] As a result the United States Steel Corporation was formed under the New Jersey law on the 25th of February, 1901,[4] and on the 26th[5] of the same month the Morgan Syndicate was formally organized by a group of financiers, including Mr. Morgan, the leading men connected with the several steel companies which it was planned to unite, and several others. The plan under which the steel industry was consolidated was prepared within a comparatively few days and on March 1, 1901,[6] was submitted to the directors of the United States Steel Corporation at their second meeting and duly approved.[7]

The plan provided for the increase of the capital stock of the steel corporation from $3000, the amount originally authorized, to an aggregate issue of $424,998,500 of preferred stock, the same amount of common stock, and $304,000,000 of five per cent bonds of such form, tenor and security as J. P. Morgan and Company should determine. The entire amount of capitalization provided, including the bonds, was to be trans-

[1] Testimony of Mr. Carnegie. *Ibid.*, pp. 2377 ff., 2438 ff.

[2] Testimony of Mr. Gary. *Ibid.*, p. 205 ff.

[3] Testimony of E. H. Gary. *Ibid.*, pp. 205–6.

[4] *Ibid.*, p. 3749.

[5] Report of Bureau of Corporations on the Steel Industry, part i, p. 390.

[6] *Ibid.*, p. 383.

[7] Stanley Report, p. 3750.

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ferred to the syndicate in exchange for the entire bond issue of the Carnegie Company, all the shares of the capital stock of the eight companies included in the consolidation, the statutory fees and taxes connected with the issuance of the new securities, and $25,000,000 in cash. The syndicate was allowed until May 30, 1901, to complete the exchange and the entire agreement was contingent upon the ability of the syndicate to deliver at least fifty-one per cent of the common and preferred stock of each of the companies. If the syndicate should fail to deliver all of the capital stock of each of the companies and all of the bonds of the Carnegie Company, the following allowances were to be made:

NAME OF COMPANY AND CLASS OF STOCK	AMOUNT OF STOCK TO BE DEDUCTED IN PAR VALUE	
	PREFERRED STOCK	COMMON STOCK
Carnegie Company,[1] common stock	$150.00	$150.00
Federal Steel Company:		
Preferred stock	110.00	. . .
Common stock	4.00	107.50
American Steel and Wire Company of New Jersey:		
Preferred stock	117.50	. . .
Common stock	. . .	102.50
National Tube Company:		
Preferred stock	125.00	. . .
Common stock	8.80	125.00
National Steel Company:		
Preferred stock	125.00	. . .
Common stock	. . .	125.00
American Tin Plate Company:		
Preferred stock	125.00	. . .
Common stock	20.00	125.00
American Steel Hoop Company:		
Preferred stock	100.00	. . .
Common stock	. . .	100.00
American Sheet Steel Company:		
Preferred stock	100.00	. . .
Common stock	. . .	100.00

In accordance with the terms of the underwriting agreement,

[1] For each $1000 par value of the bonds of the Carnegie Company as should not be acquired the agreement provided that $1000 par value of the bonds of the Steel Corporation should be abated and deducted. Report of the Commissioner of Corporations on the Steel Industry, part i, p. 385.

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J. P. Morgan and Company, as syndicate managers, issued on March 2, 1901, a circular letter[1] addressed to the stockholders of the eight companies, stating the conditions under which the underwriting was to be carried out, calling attention to the expected advantages of the consolidation and offering to exchange stock in the United States Steel Corporation for stock in the several companies at the rate of exchange named in the underwriting agreement. The circular letter appeared as an advertisement in the daily press as well as in the financial journals and on March 21, 1901, public announcement was made by the syndicate managers that a very large proportion of all the stocks had been exchanged and that the projected consolidation was consummated.[2]

Even while the exchange of stock between the United States Steel Corporation and the eight companies was being effected, it was proposed by those connected with the active management to extend the scope of the consolidation by acquiring control of six other companies. This proposition was presented to the board of directors on March 30, 1901, duly approved, and their action was confirmed by the stockholders of the original $3000 United States Steel Corporation on April 1.[3] Immediately thereafter a second underwriting agreement[4] was entered into between Morgan and Company and the United States Steel Corporation by which it was agreed to increase the capital stock of the corporation and to exchange the new shares for the capital stock of the following companies on the terms named in the table at the top of page 290.

The second part of the consolidation in accordance with the above plan, with the exception of the Colorado Fuel and Iron Company, was effected without apparent difficulty during the month of April, 1901, the capital stock having been further increased to $1,100,000,000, one-half preferred and one-half

[1] Report of the Commissioner of Corporations on the Steel Industry, part i, pp. 396–400.

[2] Circular Letter, 72 *Commercial and Financial Chronicle*, March 23, 1901.

[3] Stanley Report, p. 3750.

[4] Underwriting agreement of April 1, 1901. Appendix to Report of Commissioner of Corporations on the Steel Industry, part i, p. 386.

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COMPARISON OF SECURITIES ISSUED BY UNITED STATES STEEL CORPORATION IN 1901 WITH AMOUNTS OF SECURITIES OF CONSTITUENT CONCERNS AND CASH ACQUIRED THEREFOR[1]

COMPANY	SECURITIES AND CASH ACQUIRED	UNITED STATES STEEL STOCK ISSUED FOR EACH $100 OLD STOCK		AMOUNT UNITED STATES STEEL SECURITIES ISSUED IN EXCHANGE			
		PREFERRED	COMMON	BONDS	PREFERRED STOCK	COMMON STOCK	TOTAL
Carnegie Company:							
Bonds	$159,450,000	.....	.....	$159,450,000	.....	.....	.....
Stock (all common)	160,000,000	.....	.....	144,000,000	$98,277,120	$90,279,040	$492,006,160
Federal Steel Company:							
Preferred stock	53,260,200	$110.00	.....	.....	58,586,220	.....	.....
Common stock	46,483,700	4.00	$107.50	.....	1,859,348	49,969,978	110,415,546
National Tube Company:							
Preferred stock	39,997,400	125.00	.....	.....	49,996,750	.....	.....
Common stock	39,037,400	8.80	125.00	.....	3,514,491	49,921,750	103,432,991
Am. Steel and Wire Co.:							
Preferred stock	39,998,500	117.50	.....	.....	46,998,237	.....	.....
Common stock	49,901,900	.....	102.50	.....	.....	51,149,448	98,147,685
National Steel Company:							
Preferred stock	26,992,200	125.00	.....	.....	33,740,250	.....	.....
Common stock	31,969,800	.....	125.00	.....	.....	39,962,250	73,702,500
American Tin Plate Co.:							
Preferred stock	18,325,000	125.00	.....	.....	22,906,250	.....	.....
Common stock	27,995,000	20.00	125.00	.....	5,599,000	34,993,750	63,499,000
American Steel Hoop Co.:							
Preferred stock	13,997,500	100.00	.....	.....	13,997,500	.....	.....
Common stock	18,995,000	.....	100.00	.....	.....	18,995,000	32,992,500
American Sheet Steel Co.:							
Preferred stock	24,497,700	100.00	.....	.....	24,497,700	.....	.....
Common stock	24,498,800	.....	100.00	.....	.....	24,498,800	48,996,500
American BridgeCompany:							
Preferred stock	31,348,000	110.00	.....	.....	34,482,800	.....	.....
Common stock	30,946,400	.....	105.00	.....	.....	32,493,720	66,976,520
Lake Superior Consolidated Iron Mines Company:							
Common stock	29,413,905	135.00	135.00	.....	39,708,771	39,708,771	79,417,542
Oliver Iron Mining and Pittsburg S. S. Co., one-sixth interest;	421,700	.....	.....	.....	9,250,000	9,250,000	18,500,000
Shelby Steel Tube Co.:							
Preferred stock	4,776,100	37.50	.....	.....	1,791,038	.....	.....
Common stock	8,018,200	.....	25.00	.....	.....	2,004,550	3,795,588
Total securities by direct exchange	881,224,405	.....	.....	303,450,000	445,205,475	443,227,057	1,191,882,532
To syndicate for $174,000 par value stocks, $25,000,000 in cash and services.	174,000 / 25,000,000	.....	.....	.....	64,998,837	64,998,837	129,997,605
To incorporators for cash	3,000	.....	.....	.....	1,500	1,500	3,000
Total, securities and cash	906,401,405	.....	.....	303,450,000	510,205,743	508,227,394	1,321,883,137
Underlying bonds of constituent companies	.....	.....	.....	.....	.....	.....	59,091,657
Mortgages and purchase money obligations of constituent companies	.....	.....	.....	.....	.....	.....	21,872,023
Grand total securities issued and assumed	906,401,405			303,450,000	510,205,743	508,227,394	1,402,846,817

[1] For details concerning securities outstanding, Carnegie bonds, purchase-money obligations, and securities secured by other than direct exchange, see pp. 114 and 174 of the Report of the Bureau of Corporations. The Steel Industry I, pp. 114 and 174.

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COMPANIES	FOR EACH SHARE PAR VALUE $100 IN U. S. STEEL SECURITIES	
	PREFERRED	COMMON STOCK
American Bridge Company:		
Preferred.	110	
Common.		105
Shelby Steel Tube Company:		
Preferred	37·5	25
Lake Superior Consolidated Iron Mines Company:		
Common.	135	135
One-sixth interest in Oliver Iron Mining Company and the Pittsburgh Steel Company	92,500 shares	92,500 shares
Bessemer Steamship Company	$8,500,000 in cash [1]	

common, for the purpose of making the exchange of stock on the terms proposed in the agreement. The results of the plan, after all of the exchanges had been made, are shown in table on page 289: [2]

III

Neither at the time that the United States Steel Consolidation was formed nor at any time since then, so far as the writer has been able to discover, has an explanation been made of the principle or principles upon which the exchange of securities was based. In the case of the four Moore companies an exception to the above statement ought to be made, for while no clue is given to the distribution of securities as between the Moore Companies and all the others, it is stated in the official announcement that the aggregate amount of stock to be offered to the four companies was distributed among them in the percentages given in the public circular, in accordance with arrangements made with the principal stockholders.[3]

It is evident, however, even without a careful analysis, that neither the Moore method nor the scientific plan described in

[1] Minutes of the Board of Directors, meetings held March 30 and April 1, 1901. Stanley Report, pp. 3750–1.

[2] Bureau of Corporations; Report on the Steel Industry, part i., p. 113.

[3] Circular of announcement, March 2, 1901.

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the preceding sections was followed. If the latter plan had been adopted, not only would the various interests which were combined into one single administrative business unit have been placed upon a parity in the new company, but in addition the capitalization of the United States Steel Corporation would have been much less watered than was the case.

It will be remembered that the scientific plan is based upon two principles: first, preferred stock to be issued equal to the value of the tangible assets; and second, common stock of an equal or larger amount but distributed among the several parties to the consolidation in proportion to the surplus earnings after the preferred dividends have been provided for. Consequently in the formulation of a scientific plan, two series of facts are necessary, (1) the net tangible assets of the several companies, properly valued, and (2) the net profits of each for a period of time sufficiently long to be fairly representative of actual earning power. It is evident that the promoters, at the time the steel consolidation was in process of formation, were in possession of the requisite data, although the records do not show to what extent the printed reports of the several companies [1] were subjected to examination by the expert staff of appraisers and accountants connected with the Morgan office. In presenting the plan of consolidation to the directors of the United States Steel Corporation, Mr. Steele stated in behalf of the Morgan Syndicate that "the principal officers of the Carnegie Company have satisfied us that the net earnings of the properties which are now included in the Carnegie Company for the year 1900 are upwards of $40,000,000," and that the earnings of the American Sheet Steel Company for ten months ending January 31, 1901, were "$850,000 after making a substantial allowance for depreciation and investments in improvements." In addition he submitted for the information of the directors the printed reports of all the companies except the Carnegie Company.[2] As a result of the investigations of the Bureau of Corporations there is, however, fairly reliable information as to the respective

[1] Except the Carnegie Company. Stanley Report, p. 374.

[2] *Ibid.*, p. 3749.

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assets of the several companies at the time of the consolidation and some data, though far from satisfactory, as to their respective earnings. The available information as to the assets at the date of consolidation and the earnings of the several companies for periods specified in the footnotes is given in the following table:

ASSETS AND EARNINGS OF THE CONSOLIDATED COMPANIES [1a]

COMPANY	ESTIMATED VALUE OF TANGIBLE ASSETS [1]	MARKET VALUE OF ASSETS [2]	STATED OR ESTIMATED NET EARNINGS
Carnegie Company	$197,563	$327,422	$40,000 [3]
Federal Steel Company	81,147	63,940	11,722 [4]
National Tube Company	67,485	57,168	13,878 [5]
National Steel Company	33,909	37,931	8,750 [6]
American Tin Plate Company	24,503	25,370	5,850 [7]
American Sheet Steel Company	17,706	20,895	1,680 [8]
American Steel Hoop Company	15,661	16,928	4,026 [9]
American Steel and Wire Company	53,162	59,884	12,362 [10]
American Bridge Company	35,404	42,773	6,201 [11]
Lake Superior Consolidated Iron Mines Company	31,495	22,060	6,668 [12]
Shelby Steel Tube Company	2,791	3,571	222 [12]
Oliver Iron Mining Company and Pittsburgh Steel Company, one-sixth	9,250	9,250	264 [12]
Bankers' Investment	25,003	25,003	4,986 [13]
	$595,079	$712,193	$116,578

[1a] Three ciphers (000) omitted.

[1] Report on the Steel Industry, I, p. 167.

[2] *Ibid.*, I, p. 170.

[3] Stanley Report, p. 3749; Bridge, History of the Carnegie Steel Company, p. 363 ff.

[4] Report on the Steel Industry, I, p. 127.

[5] *Ibid.*, I, p. 161. [6] *Ibid.*, I, p. 138.

[7] Annual Report—*Chronicle*, vol. 72, p. 134.

[8] Report on the Steel Industry, I, p. 141. See also Mr. Steele's statement, Stanley Report, p. 3750.

[9] Annual Report—*Chronicle*, vol. 70, p. 1093.

[10] *Ibid.*, Dec. 31, 1900, Report on the Steel Industry, I. p. 161.

[11] Stephen Little's report to Promoter. Stanley Report, p. 4170.

[12] Average of earnings for 1901–1910.

[13] Based upon the assumption that the cash contributed would earn the average rate, that is, .1958 per cent upon tangible assets.

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The method of obtaining the estimated value of the tangible assets of the several companies is explained at length in the report of the Commissioner of Corporations on the Steel Industry.[1] As a rule, the valuation placed upon the tangible assets appears to be fairly liberal. In most cases, much dependence was placed upon the valuations determined upon in connection with the primary consolidations which occurred during the years immediately preceding 1901. Additions were made for cash contributions to the working capital and deductions were allowed wherever it appeared from an examination of the accounts or tangible assets that there had been an over-valuation. The market valuation was computed by taking the average market price of the several securities as found by the commissioner of corporations[2] and multiplying by the total amount of outstanding securities, of each class separately, and combining the results for each company as a unit. Some of the securities were distinctly of the stock-exchange variety and these were undoubtedly given a somewhat artificial valuation. The securities of others, as for example the Carnegie Company and the Lake Superior Consolidated Iron Mines Company, were closely held and the market quotations were probably more conservative and perhaps less representative. As a whole, however, the market valuation is probably more nearly representative than the estimated value placed upon the tangible assets.

In obtaining the approximate net earnings of the several companies, various sources of information have been used and in general the source in each case is indicated in the footnotes to the table. It should be stated at the outset that the information upon this subject is extremely meagre and always unsatisfactory, if not unreliable. In some cases the earnings for 1899 were adopted, in others 1900, and in still others a combination of parts of the two years. Where no information was obtainable, the companies have been arbitrarily assigned an earning power equal to that which was shown in the ten years immediately following the consolidation. Since the earnings as well

[1] Part i, pp. 117–169.

[2] Report of Commissioner of Corporations on Steel Industry, I, p. 174.

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as the value of the tangible assets are used in distributing the securities in a consolidation formed upon equitable principles, it is evident that the results of such application will be unsatisfactory in proportion as the stated earnings fail to conform to actual conditions. The results obtained by their use are, in other words, vitiated by the probable errors in the hypothesis, and are therefore submitted as indicative of certain tendencies in promotions and illustrative of a proper plan of consolidation, rather than as statements of facts.

With the above explanations in mind and subject to the limitations imposed by the unsatisfactory data, it may prove illuminating to apply first the plan proposed in the preceding pages, second, that adopted by the Moore Brothers in their several promotions and known generally as the Moore method, to the facts in hand.

Under the conditions as above stated, had the scientific method been followed, the stock in the United States Steel Corporation would have been issued in the quantities and to the several parties in interest as in the table immediately following:

SCIENTIFIC METHOD[1]

COMPANY	PREFERRED STOCK	EARNINGS	DIVIDENDS (7%) ON PREFERRED	SURPLUS FOR COMMON	COMMON STOCK
Carnegie Company	$197,563	$40,000	$14,829	$25,171	$176,425,900
Federal Steel Company	81,147	11,722	5,680	6,042	42,348,950
National Tube Company	67,485	13,878	4,724	9,154	64,161,250
National Steel	33,909	8,750	2,374	6,376	44,689,980
Tin Plate	24,503	5,850	1,715	4,135	28,982,600
Sheet Steel	17,706	1,680	1,239	441	3,091,010
Steel Hoop	15,661	4,026	1,096	2,930	20,536,650
Steel and Wire	53,162	12,362	3,721	8,641	60,565,580
American Bridge Company	35,404	6,201	2,478	3,723	26,094,850
Lake Superior	31,495	6,668	2,205	4,463	31,281,580
Shelby Steel Tube	2,791	222	195	27	189,250
Oliver and Pittsburgh, one-sixth	9,250	264	647	deficit	
Bankers	28,003	4,896	1,750	3,146	22,050,610
Promoters (12.54636 per cent)	0	0	0	0	74,660,790
	$595,079	116,518	$42,653	$74,240	$595,079,000

[1] Three ciphers (000) omitted except in last column.

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It is of course questionable whether the promoter, either from the economic or equitable point of view, is entitled to so large a share of the common stock as here awarded, namely, twelve per cent, more exactly 12.54636 per cent. That question, however, is one between the promoter and the promoted interests and does not necessarily affect the relative shares allotted to the several companies involved. In this case the twelve per cent rule was followed because the promoters thus receive approximately the same proportion as they were awarded in the Morgan plan. If thirty per cent had been allotted to the promoter, as was the custom at that time, he would have received $178,524,000 of the common stock instead of the amount assigned, and the difference, somewhat over $100,000,000, would have been subtracted from the other interests in the same proportions as that already allotted. It should further be noted that five per cent first collateral trust gold bonds may be substituted for seven per cent preferred stock either partially or as a general plan without disturbing the established scheme or the method of distributing the common stock.

The Moore plan of distributing securities in forming a consolidation was used in the promotion of the American Tin Plate Company. Since for its application in the present case the market value only of the assets of the several companies is required, the results may claim to be fairly accurate. Here the promoter is allotted 35.71 per cent of the common stock, that being the relative amount that he received in the case of the promotion of the American Tin Plate Company. This would amount to $395,663,000 par value in common stock out of a total of $1,107,858,000. This amount at $32.17 per share would have yielded the sum of $127,291,950 in cash provided the promoter had sold out at the time, on prevailing market conditions. The plan worked out in detail is given in the table at the top of page 296.

It is evident that the adoption of a particular plan determines the relative share that each of the several companies is allotted in the new consolidation. Before an accurate comparison can be made, however, it is necessary to find a common unit of

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THE MOORE METHOD [1]

NAME	PREFERRED	PER CENT	COMMON	PER CENT
Carnegie Company	$327,422	46.	$327,422	29.55
Federal Steel	63,940	9.	63,940	7.77
National Tube	57,168	8.	57,168	5.16
National Steel	37,931	5.3	37,931	3.42
Tin Plate	25,370	3.6	25,370	2.28
Sheet Steel	20,895	2.9	20,895	1.88
Steel Hoop	16,928	2.4	16,928	1.52
Steel and Wire	59,884	8.4	59,884	5.40
American Bridge	42,773	6.	42,773	3.86
Lake Superior	22,060	3.1	22,060	1.99
Shelby Steel Tube	3,571	.5	3,571	.32
Oliver and Pittsburgh, one-sixth	9,250	1.3	9,250	.83
Bankers	25,003	3.5	25,003	2.25
Promoter	. .	. .	395,663	35 71
	$712,195	100.	$1,107,858	100.

value for the several companies and by means of this unit reduce the securities to a common denominator and then compare the results. It is of course quite impossible to do this with scientific precision, but by the use of certain information that is available it is practicable to reach an approximation of some value for our purposes. It was the evident intention of those responsible for preparing the plan actually adopted to make the conditions of issue and the relative quantities of securities provided for of such an amount that the bonds and preferred stocks would each be worth par while the common stocks were to be worth one-half of par.[2]

As a matter of fact this assumption has been fairly well sustained by the market, although at times both the preferred and common have been far below the value set upon them by the promoters. Applying this principle to the securities as distributed by the Morgan plan, that is, rating the bonds and preferred stock at par and the common at one-half of par, the results are as indicated in the first table on page 297.

[1] Three ciphers (000) omitted.

[2] Circular of March 9, 1901, issued to the stockholders and bondholders of the Carnegie Company, stating the terms of exchange of securities and the disposition of fractional shares. Bridge's History of the Carnegie Steel Company, p. 363.

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ADJUSTED DISTRIBUTION—MORGAN METHOD [1]

NAME	FACE VALUE PREFERRED AND BONDS	ONE-HALF PAR VALUE OF COMMON	TOTAL VALUE AWARDED	PER CENT
Carnegie Company	$402,277	$45,140	$447,416	41.87
Federal Steel	60,446	24,985	85,432	7.99
National Tube	53,520	25,000	78,520	7.35
National Steel	33,750	20,000	53,750	5.03
Tin Plate	28,506	17,500	46,006	4.30
Sheet Steel	24,500	12,250	36,750	3.44
Steel Hoop	14,000	9,500	23,500	2.20
Steel and Wire	47,000	25,625	72,625	6.80
American Bridge	34,511	16,249	50,760	4.75
Lake Superior	39,723	19,862	59,585	5.58
Shelby Steel Tube	1,875	1,019	2,894	.27
Oliver and Pittsburgh, one-sixth	9,250	4,625	13,875	1.29
Bankers and promoters	65,000	32,500	97,500	9.12
Total	$814,358	$252,255	$1,068,613	100.

ADJUSTED DISTRIBUTION—MOORE METHOD [1]

NAME	FACE OF PREFERRED	32.17181 PER CENT COMMON	TOTAL VALUE AWARDED	PER CENT
Carnegie Company	$327,422	$105,337.58	$432,759.58	40.49
Federal Steel	63,940	20,570.66	84,510.66	7.81
National Tube	57,168	18,391.98	75,559.98	7.07
National Steel	37,931	11,203.09	50,134.09	4.69
Tin Plate	25,370	8,161.99	33,531.99	3.15
Sheet Steel	20,895	6,722.31	27,617.31	2.58
Steel Hoop	16,928	5,446.04	22,374.04	2.09
Steel and Wire	59,884	19,265.77	79,149.77	7.41
American Bridge	42,773	13,760.85	56,533.85	5.29
Lake Superior	22,060	7,097.11	29,157.11	2.74
Shelby Steel Tube	3,571	1,148.86	4,719.86	.44
Oliver and Pittsburgh, one-sixth	9,250	2,975.89	12,225.89	1.14
Bankers	25,003	8,043.92	33,046.92	3.09
Promoter	. .	127,291.95	127,291.95	11.91
Total	$712,193	$356,418.	1,068,613.	100.

This plan thus places a total value of $1,008,613,000 upon the consolidated company, and this fact must be borne in mind in applying the general principle involved to the other cases. In the Moore method, the total par value of the preferred stock

[1] Three ciphers (000) omitted.

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was fixed at $712,193,000. The common stock would then represent a value of $356,418,000 or $32 plus, per share. The details of this plan are presented in the second table on page 297.

In the scientific plan proposed in a previous section of this article the value of the tangible assets limits the face value of the preferred stock to $595,079,000, and consequently the common stock would be worth almost eighty dollars per share, the combined value of the total issue of preferred and common stocks being the same in each case. The following table shows the distribution of values under the method described:

ADJUSTED DISTRIBUTION—SCIENTIFIC METHOD [1]

COMPANY	FACE OF PREFERRED	79.57489 PER CENT COMMON	TOTAL VALUE AWARDED	PER CENT
Carnegie Company	$197,563	$140,391	$337,954	31.63
Federal Steel	81,147	33,699	114,846	10.75
National Tube	67,485	51,056	118,541	11.09
National Steel	33,909	35,562	69,471	6.50
Tin Plate	24,503	23,063	47,566	4.45
Sheet Steel	17,706	2,460	20,166	1.89
Steel Hoop	15,661	16,342	32,003	2.99
Steel and Wire	53,162	48,196	101,358	9.49
American Bridge	35,404	20,765	56,169	5.26
Lake Superior	31,495	24,892	56,387	5.28
Shelby Steel Tube	2,791	151	2,942	.28
Oliver and Pittsburgh, one-sixth	9,250	. .	9,250	.87
Bankers	25,003	17,546	42,549	3.97
Promoter	. .	59,411	59,411	5.55
	$595,079	$473,534	$1,068,613	100.

In the above tables the values have been given in totals. It may now be worth while to reduce the individual assets and earnings to percentages of the total assets and earnings and compare these percentages with the relative share of securities obtained by each of the companies in the actual allotment of securities as well as in the hypothetical distributions above presented. The relative shares in percentages are as follows:

[1] Three ciphers (000) omitted.

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SHARE CONTRIBUTED AND SHARE ALLOTTED

COMPANY	PERCENTAGE CONTRIBUTED BY			PERCENTAGE ALLOTTED EACH		
	TANGIBLE ASSETS	MARKET VALUES	EARNINGS	MORGAN	MOORE	SCIENTIFIC
Carnegie Company	33.20	46.10	34.33	41.87	40.49	31.63
Federal Steel	13.64	9.10	10.05	7.99	7.91	10.75
National Tube	11.34	8.10	11.91	7.35	7.07	11.09
National Steel	5.70	5.40	7.51	5.03	4.69	6.50
Tin Plate	4.12	3.70	5.02	4.30	3.15	4.45
Sheet Steel	2.97	2.90	1.44	3.44	2.58	1.89
Steel Hoop	2.63	2.50	3.46	2.20	2.09	2.99
Steel and Wire	8.93	8.50	10.61	6.80	7.41	9.49
American Bridge	5.95	6.10	5.32	4.75	5.29	5.26
Lake Superior	5.29	3.10	5.72	5.58	2.74	5.28
Shelby Steel Tube	.47	.50	.20	.27	.44	.28
Oliver and Pittsburgh, one-sixth	1.56	1.30	.23	1.29	1.14	.87
Bankers	4.20	3.60	4.20	9.12	3.09	3.97
Promoter	.00	.00	.00		11.91	5.55
	100.	100.	100.	100.	100.	100.

It is thus evident that under the Morgan plan the securities were distributed to the various interests, neither on the basis of assets, nor of earnings nor on a combination of the two factors. There is indeed a marked similarity between the market value of each company and the assumed value of the securities as above presented. The scientific plan on the other hand would have distributed the securities much more nearly in proportion to the respective earning power of the twelve companies.

IV

Any investigation of the methods actually employed by the promoters and bankers in effecting the consolidations of the period beginning in 1898 and ending abruptly in 1901 ought, it must be admitted, to embrace a study of all of the more important ones and, in addition, all of the various types. Such an investigation is at the present time obviously impossible, because of the fact that the details of these consolidations have thus far been kept secret. Indeed, without the efficient work of the Bureau of Corporations in its study of the steel industry, such a study as that presented in this article could not have been made.

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In the case of the other great consolidations, the requisite information, even after an extensive government investigation, is as yet concealed in the records of the corporations involved, or those of the promoters and bankers, or such information has been destroyed.

Since consolidation is likely to continue as a prominent feature of our complex economic organization, it is of the utmost importance that the principles involved as well as the methods employed should be thoroughly understood by the owners of securities in the constituent corporations. In this study attention has been called to both principles and methods, and it has been shown even with the meager and unsatisfactory information available that almost no attempt has been made in the past to establish and apply principles that conform to generally accepted standards of either economics or ethics. Rather the "bargain method" has been in almost universal use. Under such circumstances, the stronger interests are able to make the better bargain and the weaker interests have the choice of taking what they can get in the exchange of securities or staying out at their peril. Quite generally weaker interests have accepted the terms offered rather than remain independent and subject themselves to the dangers involved in such a course.

So long as the state and national governments pursue their present policy of discouraging or absolutely prohibiting consolidations, such conditions must of necessity continue. When once freedom of consolidation, within prescribed limits, shall be recognized to be one of the conditions necessary for the maintenance of fair competition, the government may well expend in some other way a part of the energy it is now using in prohibiting entirely certain classes of consolidations and in punishing consolidations it has permitted to be formed in the past. It is to be hoped it will take such action as may be found necessary to ensure that the several parties entering into a legitimate consolidation are allotted in the distribution of securities the equivalent of the share which they have severally contributed to its corporation assets and earning power.

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LORD MILNER AND BRITISH IMPERIALISM[1]

ALTHOUGH only just past sixty years—he was born in 1854—Lord Milner can look back upon a career of such varied and successful attainments as falls to the lot of but few men. Already at Balliol, where he was a contemporary of Asquith, a brilliant future was predicted for him by Jowett. Some years later, Dean Church called him "the finest flower of human culture that the University of Oxford has produced in our time." After graduating with high honors Milner spent a few years as prize-fellow at New College, and then entered the field of journalism under the guidance of Stead. Subsequently, as private secretary to Goschen, he mastered the mysteries of public finance; and, during the years from 1889 to 1892, he applied this knowledge in reforming the finances of Egypt. Back again in England, he was for five years in control of the Inland Review Department. In 1897, amid a chorus of eulogy, he left London for South Africa, where he spent those eight momentous years that are still fresh in the minds of all. While his course of action there has been, and still is, the subject of bitter controversy, only the most irreconcilable of opponents can question the purity of his motives. In all these varied fields of activity, Milner has displayed that rare knowledge of men and measures which results only from a combination of severe intellectual discipline with personal experience of administration. To all questions he brought an open mind; and, though trained in the Whig school, he has not hesitated to abandon such of this party's principles as seemed to him to be no longer tenable. While a staunch imperialist, in that he is firmly convinced of the beneficence of the work being done by the British Empire, he has a genuinely democratic conception of government. Although no party man, he has attached himself in a loose way to the Conservatives, primarily because they, more than the Liberals, realize the urgency of the imperial problem which is, in his eyes, the most vital of all questions confronting British statesmanship.

Milner's career in Egypt has been ably described by his own pen, and his far-reaching work in South Africa has been the subject of elaborate books by W. B. Worsfold. The collection of his speeches and addresses, published under the title of *The Nation and the Empire*,

[1] The Nation and the Empire. By Lord Milner. Boston, Houghton Mifflin Company, 1913.—xlviii, 515 pp.

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covers in the main the years from 1906 to 1912 when, no longer hampered by the burdens of administrative duties, he was able to devote his undivided energies to impressing the urgency of the imperial problem upon widely differing audiences in Britain and in Canada. In spite of the accomplishment of important tasks in Egypt and in South Africa, possibly these latter years have been the most fertile ones of his life, for he stands forth as the intellectual leader of the most progressive school of imperial thought throughout the Empire. Its comprehensive aims, which to many seemed visionary during the inertia of peace, have been suddenly brought within the range of practical politics by the dynamics of war. War may not be the father of all things, as the Greek philosopher claimed, but it unquestionably brings to a sharp focus hitherto vaguely defined tendencies.

Although the development of the British Empire and the spread of English political civilization throughout the length and breadth of the world has been the most momentous political development of the past three centuries, this evolution as an entity has received but inadequate attention from historians and students and is generally misunderstood by the public at large. The process by which this Empire grew and the purpose that at present animates it are clearly perceived by comparatively few. Even contemporary changes of far-reaching import have aroused only scant interest, and not many outside of the Empire itself seem to realize the fundamental transmutation in its spirit wrought in the past two decades. These years have witnessed an enormous increase in imperial sentiment in both Britain and the self-governing Dominions. The desire for closer union was to some extent always present in certain circles, but it was fully counterbalanced by centrifugal tendencies; and, up to the end of the last century, the British Empire was in a state of unstable equilibrium. That was the period of Britain's "splendid isolation," when both the Mother Country and the colonies seemed secure from serious foreign danger and the problem of imperial defence was not urgent. The emergence of Germany as a world power with vaguely defined, but alarmingly extensive, ambitions effected a great change. The challenge to Great Britain implied in the creation of a powerful German navy necessitated the withdrawal of the British fleet from the outlying seas and its concentration at the point of danger—the North Sea. The German naval menace awakened the Dominions from their dream of security and brought them face to face with problems of foreign policy and imperial defence that hitherto had seemed to them to be purely the concern of the Mother Country. They then for the first time realized as a vital fact that their present

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security and future development depended upon the strength of Great Britain and that their very existence was contingent upon the maintenance of British supremacy at sea. Furthermore, it was gradually recognized that the existing arrangement was inequitable in that the entire burden of naval defence rested upon the tax-payers in the British Isles. As this was gradually realized, the self-governing Dominions—Australia, New Zealand, and Canada—offered to assume a portion of this liability, but in seeking for the best method in which to do so, other and more fundamental questions arose which demonstrated conclusively that the existing imperial organization was inadequate and defective. These communities were confronted with the vital fact that their autonomy was not complete, in that they had no direct voice in determining the course of foreign policy or in deciding the vital issue of peace or war. Under the compelling force of foreign danger, the demand for union became ever more insistent, but no adequate means have as yet been devised for its regular expression. The periodical Imperial Conferences, at which the colonial statesmen meet their British colleagues, do not meet the exigency. Lord Milner has devoted his chief energies to stimulating this movement for greater imperial cohesion and to directing its course towards the most permanently solid goal. "My public activities," he writes, "have been dominated by a single desire—that of working for the integrity and consolidation of the British Empire."

The political terminology that is used to describe the amorphous and heterogeneous political aggregate known as the British Empire is woefully misleading, especially in so far as it is applied to the relations between Britain and the five self-governing Dominions. There is at the present time practically no remaining trace of the Roman idea of *imperium* in this connection; and the term "imperial sentiment" as used not only by Lord Milner, but by almost all others, merely connotes a desire for greater union. In many features this movement resembles that which led to the adoption of the American Constitution, as well as the Italian *Risorgimento* and the unification of Germany, but it also differs in this vital respect, that its aim is to unite in one organic commonwealth widely separated communities whose distinct characteristics must inevitably remain intact. The formation of the United States meant the gradual, though not wholly complete, elimination of those highly developed local patriotisms of the colonial era and the ultimate development of a distinctively national character. Similarly, Piedmont and the other states of Italy have been absorbed by the unified nation. In Germany, likewise, local patriotism has been very much lessened;

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and, as a result of Prussian predominance, there is a steady tendency towards conformity to one distinct type. Such an outcome is impossible in the case of the British Empire. It is neither anticipated nor desired. The problem is to form an organic commonwealth out of a "world-wide group of sister nations." In this connection Lord Milner has written some very significant words.

> Do not let me be thought to advocate the "anglicisation" of the non-British races of the Empire, or to wish to force them into a British mould. Imperialism is something wider than "Anglo-Saxondom" or even than "Pan-Britannicism." The power of incorporating alien races, without trying to disintegrate them, or to rob them of their individuality, is characteristic of the British imperial system. It is not by what it takes away, but by what it gives, not by depriving them of their own character, language, and traditions, but by ensuring them the retention of all these, and at the same time opening new vistas of culture and advancement, that it seeks to win them to itself.

On various occasions, Milner emphasized that there was "no incompatibility between Canadian national patriotism and the wider patriotism of the Empire." But he looks forward expectantly to the more or less distant day, when every one will unhesitatingly acknowledge that his primary allegiance is due to the Empire. In 1912, he said:

> My hope is that a day may come when the words "the Empire is my country" will not be a hard saying to any civilized man, I don't care what the color of his skin, in any part of it; when those words will express his real feeling; when, over and above his local and racial patriotism, he will recognize that his highest allegiance is to the Empire as a whole.

In this movement for greater imperial unity there is no element of aggression, for the British Empire is a satiated state and its imperial type of nationalism does not, as is unfortunately so often the case where nationalism is restricted to a narrow field, imply hostility towards other nationalities, but merely a desire to preserve inviolate that political civilization which English-speaking peoples rightly or wrongly, but unquestionably sincerely, cherish as their priceless birthright. In its origins and in its aims, the modern imperial movement is distinctly defensive. What Milner said in 1906, he would undoubtedly repeat today. "Our object is not domination or aggrandisement. It is consolidation and security. We envy and antagonize no other nation. But we wish the kindred peoples under the British flag to remain one united family forever."

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Seven years later, in the introduction to his collected speeches, he wrote the following significant sentences:

Imperialism as a political doctrine has often been represented as something tawdry and superficial. In reality it has all the depth and comprehensiveness of a religious faith. Its significance is moral even more than material. It is a mistake to think of it as principally concerned with extension of territory, with "painting the map red." There is quite enough painted red already. It is not a question of a couple of hundred thousand square miles more or less. It is a question of preserving the unity of a great race, of enabling it, by maintaining that unity, to develop freely on its own lines, and to continue to fulfil its distinctive mission in the world.

In a similar, but more personal, vein he addressed a Canadian audience in 1908:

I am so intensely conscious of all that the Empire stands for in the world, of all that it means in the great march of human progress, I am so anxious to give full and yet unexaggerated expression to my sense of the high privilege of British citizenship. But there is nothing so odious as cant, and this is a subject on which it is particularly easy to seem to be canting. Not that I am afraid of falling into a strain of boastfulness. The last thing which the thought of the Empire inspires in me is a desire to boast—to wave a flag, or to shout "Rule Britannia." When I think of it, I am much more inclined to go into a corner by myself and pray. But, even thus, the road is full of pitfalls. One misplaced word, the wrong turn of a phrase, may make the sincere expression of life-long conviction sound like mere empty verbiage and rodomontade.

As this movement has a grip on the Dominions as firm as on the United Kingdom, obviously its aim is not to perpetuate British supremacy in the Empire. Thanks largely to the clear vision of Chamberlain, the idea of British ascendancy has given way to one of partnership and of coöperation on equal terms by all the self-governing democracies of the Empire. The old idea of Great Britain as the Mother Country surrounded by daughter-states is replaced by the conception of a union of sister-nations coöperating for their common interests and ideals. Milner has spread this newer conception far and wide. The self-governing colonies, as he expressed it,

are, in fact, states of the Empire, and the United Kingdom itself is such a state, though no doubt still vastly the greatest and most important, bearing almost all the common burdens, and alone responsible for the great dependencies. Still, the difference between the United Kingdom and the

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other states, in the view of the Imperialism of the future, of the only Imperialism that can stand, ought to be regarded as a difference of stature and not of status—a difference which, however great today, must tend to disappear.

The imperialist's ultimate ideal, he said on another occasion, is a union in which the several states, each entirely independent in its separate affairs, should all coöperate for common purposes on the basis of absolute, unqualified equality of status.

Milner is not blind to the possible consequences of this principle upon the future position of England in the Empire, but he envisages her relative inferiority with unperturbed equanimity. In 1904, he said to a Johannesburg audience:

> I am an Imperialist out-and-out—and by an Imperialist I don't mean that which is commonly supposed to be indicated by the word. It is not the domination of Great Britain over the other parts of the Empire that is in my mind when I call myself an Imperialist more than an Englishman, and I am prepared to see the Federal Council of the Empire sitting in Ottawa, in Sydney, in South Africa—sitting anywhere within the Empire—if in the great future we can only all hold together. That may be looking very far ahead, but it is the only right ideal in this matter.

As a natural consequence of this newer attitude, the former legal theory of the sovereignty of the British Parliament throughout the Empire has been abandoned as an untenable and mischievous fiction. The older conception of possession inherited from the eighteenth-century colonial system, the idea that England owns colonies, is neither in accord with the existing political facts nor with the legal theory adopted to explain them. In so far as the Dominions are concerned, the Crown is now represented as the sole legal bond uniting them to Great Britain. But the Crown is little more than a symbol, and the ever-swelling volume of imperial sentiment demands political organs by means of which it can express itself. The existing organization does not correspond with political conditions, and requires radical readjustment, if not complete change, in order to establish the necessary harmony. This was the chief lesson that Milner insistently and earnestly inculcated upon his listeners. He urged and urged again the imperative need of creating the necessary political machinery by means of which the self-governing nations of the imperial commonwealth could deliberate and act in common in regard to those matters that equally concerned them all. To an ever increasing number, as Milner points out, "loyalty to the Empire is . . . the supreme political duty." "But loyalty to the

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Empire," he says, "however inspiring as a motive of action, is not easy to practise at the present time. And it never will be, as long as the conception of the Empire as a single state is not embodied in any institutions other than the Crown."

Knowing full well the innately conservative character of the people of his stock, Milner was far from sanguine as to the immediate realization of this aim. Evidently, as he viewed the situation, the essential thing was to have this ideal accepted as the ultimate goal in view, because then, in the fulness of time, the necessary institutions would automatically appear. Hence he has not explained explicitly what new imperial machinery is necessary, but as to the fundamental nature of the new organization required he has left no doubt. To his mind, Imperial Conferences and Defence Committees are but temporary makeshifts bridging the critical period. The scheme of a "Britannic Alliance," or that of a formal confederation, he rejects because they are not permanent arrangements. Only organic union in one body politic, with an exclusively imperial legislature and a ministry solely responsible to it, will solve the problem, as he sees it. "It is necessary, at least in my mind," he said in 1912, "that the Empire should be a real State, and not merely a number of separate, more or less closely associated, communities under a common sovereign."

On another occasion, he wrote:

> We require an Imperial Constitution, providing for the separation of those branches of public business which, like Foreign Affairs, Defence and Ocean Communications, are essentially Imperial, from those which are mainly local, and for the management of the former by a new authority, representative of all parts of the Empire, but undistracted by the work and controversies which are peculiar to any single part.

This modern imperial movement is primarily concerned with the self-governing colonies, but it also has an important bearing upon the dependencies and protectorates included within the Empire. Milner is the last to ignore the serious nature of the obligation incurred through having assumed responsibility for the welfare of the hundreds of millions of politically uneducated under the British flag. It is partly because of his keen realization of this bond of duty that he is so intent upon the creation of purely imperial organs of government. He feels that the responsibility for the 370 millions in the dependent Empire is too heavy a burden for the 45 millions in the United Kingdom, and that it should be shared by the rapidly growing democracies in the Dominions. In an address on "The Two Empires," delivered in 1908 at the Royal Colonial Institute, he said:

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In the long, long run . . . I cannot picture the people of these islands alone remaining solely responsible for the dependent Empire, carrying the whole of the "white man's burden," as far as it falls—and it does very largely fall—on the British race. . . . In our management of the dependent Empire we, the people of the United Kingdom, are only the trustees for the whole family of British states. . . . We too should look ahead, and anticipating the day when we must either have the help of the younger nations in maintaining our common heritage, or be prepared to see it dwindle, seize every opportunity which offers itself of bringing them into closer contact with all that is involved in its preservation. . . . The more we can associate them with ourselves in knowledge of and responsibility for the dependent Empire, the more we may expect to see their attitude towards its colored races develop in intelligence and liberality.

When Lord Milner delivered these addresses, he had but faint hopes that he himself, or even those of the generation after him, would witness the execution of his deeply cherished plan. The existing war has, however, greatly stimulated the movement in favor of greater imperial cohesion. The Dominions have engaged in it on a scale and in a manner hitherto unparalleled in the Empire's long history. This is bound to have important consequences.

When a question touches upon such vast and varied interests in so many scattered communities, and in addition is also closely bound up with the fortunes of an internecine war, it would be futile to attempt to predict exactly what, if any, arrangements will be made for "calling the Dominions to the Councils of the Empire." It is even conceivable, though not likely, that there may be a reaction in imperial sentiment if British arms are completely successful. In all probability, however, no matter what the precise outcome of the war may be, something concrete will be done. Whether existing imperial organs will merely be amplified, or a constitutional convention will frame an organic law for the Empire, depends upon at present incalculable factors. If merely a more or less large step forward be taken, or the goal be reached at one leap, in either case a goodly share of the credit will belong to Lord Milner, whose courageous words and sound thinking have effectively concentrated the attention of many on this, the most vital of British problems.

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REVIEWS.

Demosthenes and the Last Days of Greek Freedom, 384–322 B. C. By A. W. PICKARD-CAMBRIDGE. New York and London, G. P. Putnam's Sons, 1914.—xxiii, 512 pp.

Fluctuations in our estimates of ancient political characters are undoubtedly due in part to the progress of research. To this cause must be added our love of innovation merely as a relief from the trite and the commonplace; for in our opinions of past customs, beliefs and men there are fads and fashions. In the case of various ancient individuals, however, we must seek the most powerful causative force in modern political developments. In such oscillations of judgment perhaps no person of antiquity has suffered so much as Demosthenes. In 1805 there was printed in Leipzig a translation of his public speeches with the express purpose of educating the German nation to resist the tyranny of Napoleon; and during the greater part of the nineteenth century the most eminent philologists and historians who have had occasion to treat of Demosthenes, including Grote, Schäfer, Curtius, Jebb and Blass, have uniformly represented him as an ideal patriot and a farsighted statesman. The growth of imperialism, however, brought a reaction against this favorable view. In the general histories of Greece the new thought first appears distinctly in Holm (1886), and is more strongly accentuated in the works of Beloch and Eduard Meyer, while in monographs it is sometimes carried to the extent of rabid denunciation, as in Kahrstedt, *Forschungen zur Geschichte des ausgehenden 5. und des 4. Jahrhunderts* (1910). Beginning in Germany, this movement has spread over the world. It includes an effort to whip the conservatives into line by a free use of such terms of disapprobation as "old-fashioned" and "antiquated."

When a new work on Demosthenes is announced, accordingly, we are curious as to its attitude toward the issue. The author of the present volume has examined his subject with remarkable thoroughness. He has made himself acquainted not only with the sources but also with the modern literature. Nothing so characterizes him as the calmness with which he treats of controversial subjects. Although he continually cites the recent assailants of Demosthenes, the reader can gain from him no intimation of the violence of the attack. On the other hand, the author is no advocate of the Athenian statesman. It would be pos-

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sible to make out a fair case in favor of the early policy of Demosthenes, as represented for example by the Megalopolitan and Rhodian orations; but Mr. Pickard-Cambridge decides that on the whole the proposals contained in these speeches were unwise. It is noteworthy, too, that the author frequently calls attention to mendacious statements of Demosthenes, sometimes preferring the authority of his political adversaries. He freely grants, further, that Demosthenes was sometimes unscrupulous in his political methods and that some of his personal traits were repellant. But in his judgment these defects were more than counterbalanced by the all-absorbing devotion to a great ideal.

Among recent and contemporary scholars, however, it has been the fashion, or perhaps we should say the political principle, to belittle this ideal, to stigmatize the city-state system of Hellas as contemptibly petty, and to announce the thesis that great things worthy of admiration were not set on foot till Philip conquered Greece and Alexander founded his Hellenic-Asiatic empire. In their opinion all who opposed this movement were either blear-eyed patriots or unscrupulous demagogues. It could no more reasonably be demanded of Hellenic statesmen, however, that they should sacrifice their own city-states to a scheme of universal empire for the sake of peace and the extension of culture than it could now be demanded of European statesmen that they should surrender their national interests to a similar object. Mr. Pickard-Cambridge's work is by no means brilliant, but it enjoys the advantage of being sane and viewing the subject in its true historical perspective. Although not a great creative statesman, Demosthenes was at least faithful to the noblest traditions and aspirations of Hellas.

> It will not be maintained that the conduct of Demosthenes was at all points admirable or blameless; but since he represented worthily, throughout a most critical period, the highest traditions and instincts of his fellow-countrymen, and expressed them in a series of orations the eloquence of which was not only worthy of their theme, but at its best has never been surpassed, he is entitled to a distinguished place among those heroes of the nations, the memory of whom is among the noblest possessions of mankind.

One of the strongest points made against Demosthenes and his cause has been the assumption that his people were irredeemably decadent—no longer worthy of freedom or capable of self-government. An answer to this contention will be found in the chapter on "The Athenian State in the Fourth Century B. C." Here as elsewhere the author is moderate in judgment. While sufficiently emphasizing—perhaps over-emphasizing—the defects of the political system, he is far from consider-

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ing the people hopelessly decadent. The fact is that it was a period of experimentation, especially in socialistic directions, partly due to the new and trying conditions occasioned by impoverishment in the Peloponnesian War and by the loss of empire. It is too much to assume that the Athenians were incapable of learning by experience.

We may hope that this volume is an indication of a drift toward a sounder view of Demosthenes and what he represented, and that the time is near at hand when an appreciation of Alexander's empire as a factor in the universalization of Hellenic culture will not involve a denunciation of the manner of life which created that culture. Perhaps the present experiences of Europe will help scholars to a more liberal view of non-imperialistic systems of political organization.

GEORGE WILLIS BOTSFORD.

The Life of Lyman Trumbull. By HORACE WHITE. New York, Houghton Mifflin Company, 1913.—xxxv, 458 pp.

This book is especially interesting because the author was either an observer of most of the events which he narrates or a participant in them. He was intimate with Trumbull during the greater part of the latter's political career, sympathized with his aims, and possessed high admiration for his character and ability. For these reasons, Mr. White decided to undertake the work of placing the name of Trumbull in that "swelling flood of biographical literature that embraces the Civil War period" (page v).

The important part of Trumbull's political career began in 1854 when he was elected to the Senate by a coalition of Republicans and Anti-Nebraska Democrats in the Illinois legislature. Until then Trumbull had been a Democrat, but the repeal of the Missouri Compromise had caused him to desert that party and for the next eighteen years he affiliated with the Republicans. However, Trumbull was by nature a conservative in speech and action, and though he possessed deep convictions in regard to the evil of slavery, he was never so violent in his opposition to the institution as were most of his colleagues in the new party. But when Lincoln was elected president and the southern states began to use that fact as an excuse for seceding, Trumbull was one of those members of his party who opposed any further compromise with the slave power.

One of the unique features of this book is Mr. White's habit of commenting freely on his own contemporary opinion of an event or a condition and of passing a present mature judgment on his own former

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thought and conduct. In regard to the institution of slavery he is still of the opinion that it was the "most direful curse that ever afflicted any civilized country" (page xxvii). Moreover, since civil war was the only and inevitable way whereby it could ever have been overthrown, he justified and still justifies Trumbull's course as being both expedient and just in opposing further compromise. "What the country then needed was a jettison of compromises and a resolution of doubts," and the firing on Sumter was "a providential act that awakened the volcanic forces that ended in the destruction of slavery" (page 164).

Trumbull remained in good standing in the Republican party until 1868, when he refused to vote for the conviction of Andrew Johnson. After that he gradually relinquished his Republican regularity and in 1872 he left the party altogether and affiliated with the Liberal Republicans. In 1868 Mr. White had desired the conviction of Johnson and thought Trumbull had made a mistake in voting for acquittal, but mature reflection "and much study in the evening of a long life" has convinced him that not only was Trumbull right and he wrong in the matter of impeachment, "but," says he, "upon going over the whole ground again, I found that I had been wrong from the beginning; and that Andrew Johnson's policy, which was Lincoln's policy, was the true one, and ought never to have been departed from" (page vi).

Mr. White and Trumbull were in accord in their support of the Liberal Republican movement. In the Cincinnati convention of which Mr. White was a member, Trumbull received 156 votes for the nomination for president. Trumbull was not particularly desirous of the nomination, but both he and his biographer keenly regretted the nomination of Greeley, as it meant the certain doom of a movement that had promised much in the way of civil service and tariff reform, a bettering of relations between the North and South, and an injection of a higher morality into politics generally. And Mr. White says he has always been of the opinion that Trumbull or Charles Francis Adams could have been elected if nominated. Though neither of the two was gifted with personal magnetism, "the voters were not then in search of the sympathetic virtues. There was a yearning for some cold-blooded, masterful man to go through the temple of freedom with a scourge of small cords driving out the grafters and money changers" (page 403).

Trumbull's senatorial career closed in 1873 and, though he lived until 1896, he never held any other public office. However, on three occasions after 1873 he came prominently before the public. In 1876 he voted for Tilden and was chosen by the Democrats as one of the

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counsel on their side to argue the Louisiana case before the Electoral Commission. He was disappointed that the commission refused to go "behind the returns," but Mr. White is of the opinion that it acted wisely in refusing to do so. "If Congress or any commission acting by its authority should assume the functions of a returning board for all the states in future presidential elections, what," asks he, "could limit their investigations?" (page 412). However, had the commission been sitting to do justice between man and man and not "to save the Republic," Mr. White feels that it would have made a mistake not to give the presidency to Tilden, as "he was fairly entitled to the votes of Louisiana" (page 411).

In 1880 Trumbull was the Democratic nominee for governor of Illinois, but was defeated by Shelby M. Cullom. At this point Mr. White brings his narrative virtually to a close, reserving only a half dozen pages for the last sixteen years of Trumbull's life. In so doing he apparently makes a mistake, for in the last years of his life Trumbull was sympathetic with the Populists and other radical movements of an agrarian or socialistic nature. It seems that so important a transition deserves at least a chapter. So enthusiastic had Trumbull become over the rights of man as against the ruthless grasping of monopolies and concentrated wealth that in 1894 when Eugene V. Debs was arrested for violating the injunction that had been issued against him, Trumbull volunteered his assistance to Debs's counsel, Mr. C. S. Darrow. In December of the same year, while still agitated by the recent exciting events, he drew up for the Chicago Populists a declaration of principles, which was adopted as the official platform of a conference of the national Populist party at St. Louis on December 28, 1894.

Trumbull was also in full accord with the free silver movement, and one of the demands made in the Populist declaration was for the free coinage of silver with that of gold at the ratio of 16 to 1. Among several young men who studied law in the office of the venerable senator, one was Mr. W. J. Bryan. Trumbull died a few weeks before Mr. Bryan received the Democratic nomination for president in 1896.

Trumbull changed parties no fewer than five times during his career, and to the impartial historian it appears that each change did him credit. When it is remembered that he was never comfortable in any party that had come to be controlled by selfish politicians and greedy capitalists, the following statement in regard to his character and career by Mr. Darrow, seems just:

The socialistic trend of the venerable statesman's opinions in his later years

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sprang from his deep sympathies with all unfortunates; that sympathy that made him an anti-slavery Democrat in his early years, and afterwards a Republican. He became convinced that the poor who toil for a living in this world were not getting a fair chance. His heart was with them. [page 426].

Though it is true that Trumbull's is among the last "Lives" of the prominent men of the civil-war period to be written, nevertheless he has not suffered on that account. To the qualities of the clever journalist, Mr. White adds those of the modest reminiscent, the impartial historian, and the sympathetic but non-hero-worshipping biographer, with the result that his book is one of the very best that has been written, covering the period from 1854 to 1876.

B. B. KENDRICK.

COLUMBIA UNIVERSITY.

Prisoners of War in Great Britain, 1756–1815. By FRANCIS ABELL. Humphrey Milford, Oxford University Press, 1914.—viii, 464 pp.

From the careful and scholarly work that Mr. Abell has bestowed on the history of prisoners of war in England and Scotland during the conflicts with France of 1757–1763 and 1793–1814, and also during the American wars of 1776–1783 and 1812–1814, it is obvious that his book had been in hand long before the outbreak of the appalling war between Germany and Austria and Great Britain and her allies. It was written without the present war in mind, but the war has given it exceptional value and interest; for today, as between 1793 and 1814, there are tens of thousands of prisoners of war in England and Scotland; and the difference in treatment of prisoners of war in 1793–1814 and in 1915 serves as a measure of the advance in civilization made by the Anglo-Saxon race in the last hundred years.

One purpose of Mr. Abell's book is to answer the question, "Did the people of Great Britain treat prisoners of war with the brutality alleged by non-British writers?" A second aim is to rescue from oblivion what is accurately described as "a not unimportant and a most interesting chapter of our national history." The author is quite candid in answering the question as to brutality. "As an Englishman," he writes, "I much regret to say that after a very rigorous examination of authorities and weighing of evidence, and making allowance for the not unnatural exaggeration and embellishment by men smarting under the deprivation of liberty, I find that foreigners have not unduly emphasized the brutality with which we treated a large proportion of our

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prisoners of war." Mr. Abell's pages furnish abundant evidence in support of this conclusion.

Mr. Abell has satisfied himself, as he will satisfy his most critical readers, on the first point. With regard to the second aim he has certainly added a chapter of unusual interest to the history of England during the last half of the eighteenth and the first two decades of the nineteenth century. The wars with which the book is concerned extended over nearly twenty-seven years. Between 1803 and 1814, 122,000 prisoners of war were detained in England and Scotland—thousands of them for as long as ten or eleven years. At one period there were five thousand officers on parole, and sixty-seven thousand of the rank and file of the fighting forces of the enemy were in prisons or in hulks. The cost of maintaining prisoners in some years was as high as £3,000,000. Parole prisoners were domiciled in as many as fifty English and Scotch towns. There were hulks in the Medway and at Portsmouth and Plymouth. A great compound existed from 1797 to 1814 at Norman Cross, near Peterborough, at which as many as 3500 prisoners were in detention. There was another large prison at Portsmouth; and there were smaller prisons at Sissinghurst, Forton, Kergilliack, Shrewsbury, Perth, Yarmouth and Edinburgh.

Local trade was much dislocated in the neighborhood of the larger prison camps by the industries carried on by the prisoners. There were hundreds of duels fought by prisoners, many of them with fatal results. Forging of bank notes and coining were carried on at some of the prisons. Social life in the small provincial towns where officers were detained on parole was often much changed by the presence of the involuntary sojourners. Prisoners married and died in the parole towns. Hundreds of parole men became fathers without becoming husbands, and consequently made much work for the poor-law authorities and the local magistrates. Yet until Mr. Abell embodied the results of his documentary research and extensive field work in its present form there were not ten pages in print in England covering the entire aspects of this interesting episode in the life of the people of England and Scotland. Three or four monographs there were recounting the history of such prisons as Norman Cross, Dartmoor and Perth. Except for these exclusively local histories Mr. Abell, when he began his work, moved into a field in which no English writer had preceded him, and he has worked it so thoroughly that there can scarcely be an aspect of the life of the prisoners of war in Great Britain that has eluded him.

The history of the prison systems, and the description of prison conditions as they are unfolded by Mr. Abell are of exceeding interest.

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They are, however, the reverse of agreeable; and it is difficult to say which is the more depressing, the description of the squalor and cruelty that characterized life on the hulks and in the prisons, or the exposure of the methods by which the helpless men and boys who were detained as prisoners were cheated and robbed by clothing and victualing contractors who waxed fat on their want and misery. The government was not niggard in its allowances for prisoners of war; but it had its hands full with the war and with political turmoil at home. Much had to be left to the officers who were in charge of the hulks and prisons; and graft was as rampant as it was in the days when even a small army or navy contract meant a fortune for the man who could command the political pull to obtain it.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

The Naval Mutinies of 1797. By CONRAD GILL. University Press, Manchester, 1913.—xxii, 412 pp.

An adequate history of the two mutinies at Spithead and the mutiny at the Nore in 1797 has long been desired; for but little attention has been given them in the general histories of England of the period of the wars with Revolutionary France and with Napoleon. Admiralty and Home Office papers necessary to the preparation of such a history have been available for some years, and Mr. Gill has made excellent use of them and of much other contemporary material in his admirably written history of these disturbing episodes in the great war of a hundred years ago.

At the time the war began, the wages of men in the navy were nineteen shillings a month—a rate at which they had stood since the days of Cromwell, notwithstanding the general increase in the price of commodities which was so marked a feature of the economic history of England in the eighteenth century. Thousands of the men of the navy of 1793–1814 had been pressed into the service, and discipline was so drastic that the men—volunteers or pressed men—were not permitted ashore from the time a ship went into commission until she was paid off and the crew disbanded. The pay of the men in the army was increased in 1795; but until the old men-of-war, built of wood, were superseded by modern vessels of steel it was the conviction of British governments and of the English governing class that the nation could not afford to pay a living wage to the men of the fleet, and that it was the duty of mariners to serve their country at the sacrifice of themselves and their families.

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There is some survival of this old conviction in Mr. Gill's pages. He concedes that if the press gang were revived it would be met with a storm of indignation, but he suggests that it is difficult to realize that the press gang was less hateful to earlier generations of Englishmen. Yet its abominable harshness and its cruelty were adequately realized by the people of England of the days of Pitt, Nelson and Wellington; and a keen realization of what the press gang meant will surely come home to Mr. Gill if he will familiarize himself with the social history of England from the American Revolution to the beginning of the reign of Queen Victoria.

Mr. Gill's apology for the press gang is that in the eighteenth century impressment was an established fact, and the sailor from the time of his first adventure in a merchant ship knew that he was liable to be drafted into the navy. "Moreover," he adds, "in respect of danger and discomfort there was little to choose between the naval and the merchant services, and in some ways a naval career was preferable to life in trading vessels." It would be just about as appropriate to speak of a negro having a career on a cotton plantation in a southern state in the days of slavery as it is to describe the life of a man pressed into the royal navy as a career. It was a miserable existence; and much of what Mr. Gill has written in his most interesting pages would be of small value if he could persuade his readers that there was little to choose between the naval and merchant services of the eighteenth century. Another of Mr. Gill's pleas for the press gang is that impressment was essential to the continuance of the navy. "The Admiralty," he writes, "tried to encourage voluntary enlistment by offering enormous bounties, but those who might be attracted by the financial reward were repelled by the bad conditions of life in the navy. The attempt to attract volunteers met with so little success that at the height of the war only half of the men in the fleet had enlisted of their own accord. The other half had to be supplied by the press gang."

All this might have been altered if the Admiralty had realized that service with the war fleet must be paid for like any other service—paid for in cash in the same way as ships and war equipment had to be paid for; and if, moreover, the government had offered to the wives and dependents of seamen some other alternative than the workhouse or outrelief from the parish. As Mr. Gill unfolds his detailed story of conditions in the navy before the mutinies at Spithead and the Nore, surprise is not that the men mutinied in 1797, but that the mutinies did not come much earlier in the war with France. The histories of the three distinct mutinies are necessarily a little difficult to work out.

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So are the histories of the organization for mutiny in the different fleets. But Mr. Gill has acquitted himself of a difficult and complicated task with singular success and given us a book that is more than a contribution to the history of the British navy. It is a distinctly serviceable contribution to the political and social history of England of the period of England's last great war with France.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

Studies and Notes Supplementary to Stubbs's Constitutional History. Two volumes. By CHARLES PETIT-DUTAILLIS. Manchester, The University Press, 1911 and 1914.—xiv, 152 pp.; 316 pp.

Ever since the appearance of Stubbs's *Constitutional History of England* its indispensableness has been steadily recognized. Whatever else one reads on the English constitution, he must also read Stubbs. An American historian who has explored a portion of the master's field very diligently does not hesitate to say that "in the study of the constitution as a whole, Bishop Stubbs's work does form an epoch from which all later work must date." The translation of the *Constitutional History* into French, two volumes of which have already been published, affords sufficient evidence that, despite the activity of British and foreign historical scholarship during the past generation, it has not as a whole been superseded. However, recent research has been by no means barren. Fresh light has been thrown upon obscure subjects; sources of information unused by and even unknown to Stubbs have been effectively exploited; conclusions resting upon insecure foundations have been modified; former opinions and interpretations have been revised. Much has been done to connect the English constitution with continental and especially with Norman-French institutions. In a word, the *Constitutional History* needed to be supplemented, revised and put abreast of the latest historical scholarship.

This need has been met by M. Petit-Dutaillis, the editor of the French translation of Stubbs, a distinguished medievalist and authority upon certain periods of English history. The "notes" which he has appended to the text treat of topics dealt with by Stubbs, respecting which recent investigation has made necessary some modification or restatement of the latter's views. Some of these notes are merely convenient summaries of the conclusions of other scholars; others are genuine contributions by the writer to historical knowledge. They seemed to satisfy so well a long-felt want that they have been translated into English and published in the Historical Series of the University of Manchester.

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Perhaps the most interesting of the twelve essays which comprise the first volume is that on the Great Charter. M. Petit-Dutaillis speaks with authority upon this subject. He was one of the first to question the classical theory of the Charter held by Stubbs, Freeman, Green and Hallam, and to point out its essentially feudal character. In his *Etude sur la vie et le règne de Louis VIII*, published in 1894, he said: "The barons had no suspicion that they would one day be called the founders of English liberty. The patriotism of writers on the other side of the Channel has singularly misrepresented the nature of this crisis." Since he wrote this his views have in the main been corroborated by the writings of Pollock and Maitland, Jenks, Miss Norgate, and especially by McKechnie's masterly commentary on the Charter. M. Petit-Dutaillis gives a very pertinent extract from a document written about 1220, of which he had made use in his work on Louis VIII, to show the light in which the Charter appeared to a contemporary of King John. It is strange that he makes no reference to Mr. G. B. Adams's articles in the *American Historical Review* touching on Magna Charta. Clause 61 of that document, which he regards as an attempt to set up a "most *naïf*" and "most barbarous" procedure, is viewed by Mr. Adams as the germ of the limited monarchy and, indeed, of the English constitution!

The editor has found it necessary to add only two studies to the second volume of the *Constitutional History* covering the period from 1215 to 1399. One of these deals with the history of the Forest and the other is on the "Causes and General Characteristics of the Rising of 1381." They are both substantial monographs which are worthy contributions to English historical science. Stubbs's treatment of the Forest was superficial and fragmentary and not at all commensurate with the importance of the subject in constitutional history. M. Petit-Dutaillis's essay is doubtless the best brief but comprehensive account of the Forest to be had. Its origin as an institution he traces to Normandy, holding that it was introduced into England by the Norman Conquest. The abuses of forest law and administration, of which noble and peasant alike complained, are clearly set forth, as is the financial importance of the Forest to the kings as a source of royal revenue. The long struggle for disafforestment is related in some detail, and interesting comparisons are instituted between the history of the Forest in England and France.

M. Petit-Dutaillis writes with exceptional authority upon the Rising of 1381, which he considers one of the most interesting and significant events in the whole history of the Middle Ages. His knowledge of the

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revolt and its causes is derived from an exhaustive study of the sources. In 1898 he edited a volume entitled *Le Soulèvement des Travailleurs d'Angleterre en 1381*, based upon documents collected in the Record Office in London by a young French scholar, André Réville, who had died before completing his work. This volume, which is now out of print, and other recent investigations have served to place the revolt in a light quite different from that in which Stubbs viewed it.

What gives perhaps their chief value to these studies as a supplement and corrective of the *Constitutional History* is the difference in point of view between Stubbs and M. Petit-Dutaillis. The interest of the former in his subject was distinctly national and English. In reading the *Constitutional History* one is always conscious that the author is expounding the institutional past of his own race. M. Petit-Dutaillis has approached medieval England through the study of continental and especially French history. Therefore he is able to point out helpful similarities and contrasts of which Stubbs was unaware. His comparative viewpoint is a useful antidote to Stubbs's insularity.

R. L. SCHUYLER.

Whigs and Whiggism. Political Writings by Benjamin Disraeli. Edited with an Introduction by WILLIAM HUTCHEON. New York, The Macmillan Company, 1914.—viii, 476 pp.

Quite an intimate acquaintance with the statesmen and politicians, with the conditions of political parties, and with the questions of the first twenty years after the Reform Act of 1832 are necessary to a profitable reading of these collected journalistic writings of Disraeli. But the task of tracing and preparing for republication his contributions to *The Morning Post* in 1835 and to *The Times* between 1836 and 1841 was quite worth while, for at least four reasons. They are of service in following the amazing evolution of Disraeli from a political and social adventurer to a statesman of first rank. They throw some new light on both party and social conditions and on English civilization in the period that lies between the Reform Act and the incoming of Peel and the Conservatives in 1841. They serve as a measure of the advance of the English newspaper press in soberness of language and general respectability; and, moreover, this volume of Disraeli's newspaper articles, together with Mr. Hutcheon's introductory chapter, will help to a better understanding, but not to a higher estimate, of the political character of Lord Lyndhurst.

Lyndhurst was Disraeli's friend and patron at the time Disraeli was

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urging in these letters of 1835 to *The Morning Post* that the House of Lords, then in a reactionary and revengeful mood, should insist on its amendments to the bill for ending the old municipal corporations and substituting town councils more in accordance with the new spirit of the political England that was coming into being as a result of the Reform Act. It is almost inconceivable that a man who had been Lord Chancellor could submit to the fulsome adulation that Disraeli plastered over Lyndhurst in the columns of *The Morning Post*. Any self-respecting politician would have stepped into court and asked for an injunction to stop Disraeli's ridiculous outpourings of nauseating praise. Lyndhurst, however, must have liked it. At any rate he took it lying down, for in Mr. Hutcheon's volume these letters to *The Morning Post* extend to nearly seventy pages.

Disraeli's abuse of Melbourne and Russell and of the Whigs was as thickly laid on as is his adulation of his friend and patron. Melbourne in these *Morning Post* letters is "the miserable Lord Melbourne," "a political profligate", "a trading trimmer," and "Manchester-massacre-Melbourne." Melbourne's colleagues were "brawling braggarts", "Gallomaniac apes," and "rapacious Whigs." They were "dogs and far viler than dogs." Sir John Campbell, attorney-general in the Whig government of 1832–1841, according to Lyndhurst's handyman in *The Morning Post*, was a "booing, fawning, jobbing progeny of haggis and cockaleekie"; and, even worse than this, he was a man of "base and breechless ancestors." The long-defunct *Morning Chronicle* was the organ of the Whig party in the first twenty years after the Reform Act. It objected in August, 1835, that William IV was a Conservative. "We do not require the allegation of the *Morning Chronicle*," was Disraeli's comment in *The Morning Post*, "to assure us that his Majesty is a Conservative, though, to be sure, it is the only assertion of the *Morning Chronicle* that we could ever believe."

In 1836 Disraeli, then in his thirty-second year, journeyed eastward from the *Morning Post* office along the Strand and Fleet Street, carrying his journalistic wares to another market. His Runnymede letters were contributed to *The Times*. They are reprinted in full in Mr. Hutcheon's collection—a collection that will always be of value as a companion volume to the *Life of Disraeli*, of which, up to the present three volumes have been published.

EDWARD PORRITT.

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Sir Roger L'Estrange. By GEORGE KITCHIN. London, Kegan Paul, Trench, Trübner & Co., 1913.—xiv, 440 pp.

Roger L'Estrange is known today chiefly for his pioneer work as a journalist in the seventeenth century and is read, when read at all, for his translation of Æsop's fables. A discussion of the vicissitudes of his life, however, should yield far more to the student of history than to the student of literature. He was a staunch royalist throughout the whole of his long career, so consistent a defender of divine right and so eager a castigator of Presbyterians that by 1685 he found himself left high and dry, deserted by his former friends and hooted for a Papist by the public he despised. As censor of the press he exhibited unprecedented severity; in fact, the history of his activities throws great light on the well-nigh absolute power of licensers and on the latitude allowed them in taking steps toward the detection, arrest and punishment of offenders. The execution of John Twynne, for instance, was only one of the "successes" attributable to L'Estrange's efforts. Even his journalistic enterprises—the publication of the *Intelligencer*, the *Newes* and the later and more ambitious *Observator*—were undertaken not so much to disseminate information as to control and supervise it. L'Estrange was a prolific pamphleteer, always in the thick of the fight over Papists, "exclusionists," dissenters, toleration, and the use of the dispensing power, expressing himself with such bluntness and utter disregard of popular opinion that he brought upon himself the hatred of the more liberal public and was obliged at one time to flee the country. It was due to the tenacity of "Dog Towser," as L'Estrange was called, that the perjury of Titus Oates in the affair of the alleged Popish Plot was finally exposed. The controversies in which he indulged form an illuminating comment upon the history of the later Stuarts.

Mr. Kitchin has recognized the value of his material, and in the matter of careful research his book leaves nothing to be desired. He has brought to light correspondence never before noted and has been indefatigable in tracking down references to obscure personages and happenings. He has voluminous information about everything. Unfortunately, he has not been able to write a book. The material is thrown in much as he found it and the result is 400-odd pages of confused notes, some valuable, some unimportant, which need badly to be composed, arranged or eliminated. The notorious case of John Twynne, referred to above, is never clearly told in any one place though brief references to it are scattered through the work. It is im-

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possible to get from the book a coherent biographical sketch of an eccentric and vivid personality because of the author's inconsequential arrangement of material, hasty paragraphs and crabbed style. The inadequate index makes the work almost useless as a reference book for students of history; and the numerous bibliographical inaccuracies throw suspicion on its value as "a contribution to the history of the press." Yet information is there and plenty of it—for students as patient in research as Mr. Kitchin himself.

A more reliable bibliography of L'Estrange is that given by Professor Trent in the *Cambridge History of English Literature*, volume x, pages 463–466. A full list of corrections and additions to Mr. Kitchin's bibliography is to be found in the New York *Nation*, volume xcvii, pages 31–32 and 54–55.

HARRIET FOX WHICHER.

URBANA, ILLINOIS.

Responsible Government in the Dominions. By ARTHUR BERRIEDALE KEITH. Oxford, The Clarendon Press, 1912.—Three volumes: li, xi, xii, 1670 pp.

Mr. Keith's three volumes are the expansion of an earlier work which appeared under the same title in 1909. Quite evidently they are the result of long familiarity with the colonial field and of painstaking investigation. Although the author has made good use of *Parliamentary Government in the British Colonies,* he has, during the period which that justly celebrated work covers, drawn on sources of information which Todd did not use; and in considering the development of the last thirty years—a period of peculiar difficulty in view of the slow transformation of the self-governing colonies into a "galaxy of independent nations," as Laurier phrased it—he had no general treatise to rely upon for guidance. The industry required for the collection of so much varied information as Mr. Keith presents deserves particular recognition. He has made it possible to gain a fairly adequate knowledge of British colonial institutions without making a search through the special literature of each colony.

Mr. Keith has given us a systematic treatise, not for popular use, but for use mainly as a work of reference. Precedent and practice are set forth with an abundant detail, and from the standpoint of a lawyer. The list of cases cited occupies fifteen pages; the list of acts, eighteen. There are occasions, one must confess, when the details are a little too obtrusive, when the book falls somewhat short of that pyramid form

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which Lord Acton's conversation is said to have taken—the point clear and distinct above, and below it "the vast subjacent mass of knowledge." The plan of the work is also open to criticism at some points. It may be said in a general way that the first volume discusses the central executive and legislature of the Dominions, that the second sketches the distribution of powers between central and local governments, and that the third deals with the relations of the colonies with the mother country. There is no apparent excuse therefore for dealing with the formation of the federal systems and the nature of their constitutions only after the central organs of government have been passed in review, or for treating the central government of the Union of South Africa in the second volume instead of in the first. A systematic treatise should be systematic.

There are serious deficiencies in the mechanical apparatus. The index is principally a catalogue of proper names—Daglish, Dalgety, Dailey, Darling, Davey, Davies etc. One looks under "constitution" and finds one solitary, futile reference. Under "quorum" reference is made to the very inaccurate statement that "a third is about the average number," while in another part of the book (unnoticed in the index) a reader who is under divine guidance will find what he is looking for. It is surprising too that while in the appendix certain "prerogative instruments" (letters patent, royal instructions etc.) are printed at length, no place has anywhere been found for the Canadian or Australian or South-African constitutions.

In a revision of the present edition numerous corrections of style must be made. Some sentences are long and involved; some are all but unintelligible. For instance, reference is made to the "Ontario House of 106 members, one for each seat" (page 477). Or again (page 481): "There are now ninety electorates, each returning one member; the number has reached 141, was then in 1902 reduced to 125, and further reduction is possible." Or again (page 771): "There is no chance of such disadvantages resulting as have resulted in the United States, where the Federal Government has admittedly too little power to enforce matters of external affairs affecting the subjects committed by the constitution to the provinces, as was seen in the affair of the riots at Vancouver." There is no need to multiply illustrations. Suffice it to say that, while under any circumstances Mr. Keith's volumes will have a wide use and a high reputation, it is very desirable that some of the superficial faults should be remedied.

E. M. SAIT.

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Introduction to the Study of the Law of the Constitution. Eighth Edition. By A. V. DICEY. London, Macmillan and Company, 1915.—cv, 577 pp.

A new edition of a standard treatise does not as a rule call for review. In this instance, however, Professor Dicey has prepared an introduction to his famous work in which he undertakes to show to what extent the principles of the English constitution, as he expounded them in the first edition of his book thirty years ago, have been affected by changes in law and custom since that time, and to analyze the leading constitutional ideas which have been evolved or have begun to exert noticeable influence in England during a generation of marked political activity and speculation.

All students of the English constitution will recall Professor Dicey's masterly exposition of the principle of parliamentary sovereignty. The Parliament Act of 1911 has, to say the least, rendered that classical doctrine open to dispute. The House of Lords has ceased to be a necessary part of the legislative power, and in 1914 a bill to which it had refused assent was for the first time placed upon the statute book. "It is arguable," Mr. Dicey now writes, "that the Parliament Act has transformed the sovereignty of Parliament into the sovereignty of the King and the House of Commons." When one reflects that King and Commons could legally abolish the House of Lords, the assertion that the Parliament Act has "greatly increased the share of sovereignty possessed by the House of Commons and has greatly diminished the share thereof belonging to the House of Lords" will certainly not seem to be an exaggerated statement. Nevertheless, the new legislative authority created by the Parliament Act is bound by the requirements of that statute; the power still possessed by the Lords to delay legislation is not consistent with the unlimited sovereignty of this new authority; and King, Lords and Commons can still unquestionably enact or repeal any law whatsoever. Mr. Dicey therefore concludes that "sovereignty still resides in the King and the two Houses of Parliament." Throughout the whole empire Parliament still claims absolute legal sovereignty, but it in fact exercises materially less authority over the Dominions than it did thirty years ago. It has shown itself ready to exclude from recent Dominion constitutions appeals to the Privy Council, and it has conferred upon the legislature of the Union of South Africa the right to amend the South African constitution. Today British colonial policy concedes to every Dominion "absolute, unfettered, complete, local autonomy, in so far as such perfect self-govern-

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ment . . . does not clearly interfere with loyalty of the Dominion to the Empire." That this recent marked growth of self-government has involved no weakening but rather a strengthening of the imperial tie is eloquently proved by the present war.

The "rule of law" which Professor Dicey emphasized as a fundamental principle of the constitution, and to which he devoted half of his original treatise, is pronounced to be still "a distinctive characteristic" of the constitution. There has been of late, however, a notable decline in reverence for this principle, as evidence of which can be cited legislation conferring judicial authority upon governmental officials, popular distrust of judges, and a general growth of "lawlessness," manifested by resistance to taxes deemed unjust, the activities of the militant suffragettes and, though Professor Dicey does not mention this, the recent occurrences in Ulster and the defence of rebellion by eminent members of Parliament. The growth of lawlessness is accounted for partly by the failure of the newly-enfranchised electors to realize the dangers involved in a departure from the rule of law, and partly by the increase of partisan legislation and the conflict between law and public opinion.

Of course thirty years have not left the conventions of the constitution wholly unaltered. Among the new constitutional customs is the rule that a ministry, if defeated at a general election, resigns immediately without waiting to meet the new Parliament. The growing autocracy of the cabinet and the decline of the House of Commons are unquestioned tendencies of the last generation. The growth of the party system and the recent rules of the House of Commons restrict discussion, reduce the influence of the private member and enable the ministry of the day, supported by its well-disciplined majority, to ride rough-shod over the opposition. A number of important conventions have, in Mr. Dicey's opinion, resulted from recent changes of law, especially from the Parliament Act. This statute, he points out, goes some distance toward establishing a written constitution in England; at any rate, it creates a new legislative authority which can act only by virtue of and in accordance with its provisions. By making possible legislation without the consent of the Upper House, the Parliament Act appears to render obsolete what used to be called the "safety valve of the constitution," the royal prerogative of creating, or threatening to create, new peers for the purpose of "swamping" opposition in the Lords to bills passed by the Commons and desired by the electors. The quinquennial provision of the Parliament Act makes it probable that parliaments will normally last about five years, since the conditions which used to cause ministerial dissolutions no longer exist.

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Mr. Dicey devotes more than half of his introduction to an examination of four important constitutional ideas which have attracted wide attention during the last thirty years: woman suffrage, proportional representation, federalism and the referendum. His treatment of these subjects, while not exhaustive, is suggestive, and the attempt is made in each case to present the leading arguments on both sides. He sounds the warning note of the intellectual conservative when he tells us that these much-agitated "reforms" are calculated to promote popular rather than wise legislation. The only one of the proposed innovations of which he appears to be in favor is the referendum. "It is probable if not certain," he writes, "that any one, who realizes the extent to which parliamentary government itself is losing credit from its too close connection with the increasing power of the party machine, will hold with myself that the referendum judiciously used may, at any rate in the case of England, by checking the omnipotence of partisanship, revive faith in that parliamentary government which has been the glory of English constitutional history." To the reviewer the wisdom and propriety of injecting into a legal treatise highly controversial questions of present-day politics seems open to dispute.

R. L. SCHUYLER.

De la Responsabilite Civile des Personnes Publiques et leurs Agents en Angleterre, aux Etats-Unis et en Allemagne. By ROGER BONNARD. Paris, Giard et Briere, 1914.—245 pp.

The civil responsibility of the state and its subdivisions for the injuries caused by the wrongful acts of public officers is a field of public law in which the problem of reconciling the conflicting interests of the public and the individual has received rather different solutions in the law of different countries. With the rapidly multiplying points of contact between citizen and government, due to the widening of the field of public administration, this has come to be a problem of serious practical interest. It is, furthermore, a problem for which the kaleidoscopic development of American public law has offered a solution of rather questionable success. There is room therefore in the literature of administrative law for a comparative study of the theory and practice in the leading countries in the matter of the tort liability of the state and its agents. It is such a study which Professor Bonnard offers in a recent volume in which, in separate chapters, he expounds the systems of England, the United States and Germany.

Nearly two-thirds of the volume is devoted to the United States, less

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than one-third to England and the remaining twenty-two pages to Germany. This apportionment of space is not as ill-judged as might at first appear, since it is in fairly true proportion to the complexity and diversity of the three systems of jurisprudence.

In England the civil responsibility of the state and of public officers has been dealt with in characteristic English fashion—in theory a chaos of ancient traditions, unconvincing fictions, and legal inconsistencies; in practice an efficient and equitable working system. The welfare of the state requires a generous application of the rule of public irresponsibility. This rule has its origin, of course, in the ancient doctrine that the king can do no wrong, can neither commit nor authorize a tort. Nor can the incorporated agents of the Crown do wrong, nor the ordinary officers of the Crown, nor municipalities, when exercising discretion, nor judges in the performance of judicial functions. For the protection of the injured individual, however, there are supplementary rules creating public civil responsibility. Royal officers are liable for all torts committed in connection with their ministerial duties; judges are responsible for injuries resulting from extra-judicial or ultra-vires acts; while the liability of local public corporations and their officers is so complete as to afford the citizen, as a rule, adequate remedy. Furthermore, special permission to sue in the King's courts upon the legal obligations entered into by the Crown may readily be secured, while frequently in cases where a public officer is himself insolvent or has committed a tort while acting in good faith, the government will, as an act of grace, indemnify the injured party. Some twenty years ago a special statute was enacted by which the procedure in prosecuting tort claims against public officers was simplified and clarified.

In American law the rules of responsibility of state and of officers grew out of and are analogous to those of England. The irresponsibility of the federal and state governments rests not upon the theory that the people can do no wrong but upon grounds of public policy. This irresponsibility is somewhat modified, however, by allowing indirect action against the state, equitable relief against officers, petitions to the legislature, and the findings of courts of claims. The responsibility of officers is narrower than in England and is in general confined to ministerial functions or ultra-vires acts, and those duties which are owed to the individual citizen rather than to the general public. The rule of irresponsibility has been applied much more broadly to American than to English municipalities because of a greater need of protecting the financial resources of the city. The American city is, however, liable for torts arising from the performance of its corporate and pro-

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prietary as contrasted with its governmental functions, occasionally from the management of any municipal property regardless of the use to which it is put, from the construction and repair of streets, from any act, corporate or governmental, which results in a positive trespass upon the property of the individual. The author finds that, on the whole, there is a discernible tendency in American law to broaden the civil responsibility of the state.

The German system differs radically from that of England and the United States. The rights of the injured citizens are protected by permitting him to bring suit against the state for damages arising from the wrongful acts of public officers. The public exchequer, on the other hand, is protected by giving the state in turn a right of action against the officer when it can be shown that the act creating the liability was intentionally or negligently committed.

Professor Bonnard works to advantage in dealing with the fairly clear, succinct doctrines of law which control the public tort liability in England and Germany. In attempting to interpret and systematize the American decisions, however, he faces a very different problem. Any scholar who sets himself the task of finding in the chaotic mass of judicial utterance on this subject a clear-cut and invariable rule of law is doomed to disappointment. But Professor Bonnard has systematized the American cases by brute force, and the result, while a tribute to his analytic and synthetic powers, is hardly an accurate statement of the law as it stands. Forced to rely upon such sources as the case-books of Freund, Beale and Goodnow, he has somewhat naively regarded them as final, authoritative and exhaustive compendiums. The cases are taken in groups of twos, threes or fours, and viewed with a microscopic gaze under which holding and dictum are inseparably blended. An instance of this method of treating cases occurs in the author's discussion of the tort liability of American cities. Beale and Freund present cases to show that the city is not liable for damage resulting from the misuse of the discretionary function of planning a public improvement, but that the rule has been so modified as to create a municipal liability if the result of the bad planning is in the nature of a nuisance or positive trespass on a person's property. While it is quite true that the cases so selected happen to be cases in which the injuries arose in connection with the building of sewers, it is rather startling to find that Professor Bonnard has devoted a six-page section to a discussion of the *special American jurisprudence relating to sewers*. There are other instances also in which for purposes of schematic arrangement cases are distinctly warped out of their true meaning. While these inaccuracies

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appear usually in connection with points of relatively minor importance, they rob this portion of the study of the authoritative value to which the other chapters may lay claim.

Despite the serious weakness mentioned, Professor Bonnard's book has real value as a brief, clear, well-arranged summary of information not otherwise readily available. It enables the reader to compare intelligently the three systems of jurisprudence under consideration and to judge with some accuracy the merits and defects of each.

ROBERT E. CUSHMAN.

COLUMBIA UNIVERSITY.

The Law and the Poor. By EDWARD ABBOTT PARRY. London, Smith, Elder and Company, 1914.—xxi, 316 pp.

At the turn of the century when England, like most other progressive countries, was much engaged in retrospection and stock-taking, the Macmillan Company published a timely volume entitled *A Century of Law Reform.* It consisted of twelve lectures on the changes in the law of England during the nineteenth century—lectures delivered under the auspices of the Council of Legal Education in the hall of Lincoln's Inn during 1900–1901. It was an exhilarating book; for it was a record of beneficent reforms—reforms of which an old-world and once slow-moving country like England might well be proud. But much as was accomplished in the nineteenth century, Judge Parry's book on *The Law and the Poor*, which comes fourteen years later, makes it abundantly clear that much remains to be done in the reform of the laws administered by the police magistrates, in the county courts, and in the divorce court in London, before it can be claimed that rich and poor in England enjoy equality under the law.

Mr. Parry has been a judge of county courts in Manchester and Lambeth for twenty years. Seldom or never is a county court judge in England promoted to the higher courts—to the dignity and emoluments of a judge sitting in the courts in the Strand and going on assize circuits. Apparently Judge Parry has made up his mind that no such promotion nor even an honorary degree of LL. D. from any of the older universities is likely to come his way; for in *The Law and the Poor* he has written the most readable and probably the most outspoken and revealing book on social conditions in England that has come from the press since the first enfranchisement of working men in 1867. It is written with a first-hand and intimate knowledge of the conditions of the laboring, the artisan, and the lower middle-class populations of Man-

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chester and London, and with an equally penetrating insight into the devious and sinister methods of the traders who prey on the wage earners. It is written with a humor that is contagious, and with a sympathy for democracy and the upward striving of the working classes that is surprising from a man who has been at the bar and on the bench.

English lawyers, like English statesmen and politicians, are adequately represented in British biography and memoirs. Usually there is little to distinguish the memoirs of one English judge from those of another. The anecdotes vary a little; otherwise judicial memoirs run in much the same conventional and comfortable vein—the story of the struggle for a place at the bar; of success there and a seat in the House of Commons; with a judgeship and a retiring pension as the goal. Judge Parry's book is not a memoir in this sense of the word. It is quite unconventional and unlike any other book written by an English judge; for it is a record of his experiences and observations as a judge in the county court and as a magistrate at petty sessions; and its aim is to make English law-makers and the English people understand how the laws touch the daily lives of the wage-earning population, and where and why these laws are urgently in need of reform. It is dedicated to the "man in the street . . . in the pious hope that he will take up his job [the work of reform] and do it."

Judge Parry knows the history of the law as it has touched the poor from the days of serfdom—knows it as well as he knows the laws he has so long administered as judge of county courts. He is under no misapprehension as to the law having always borne hardly on the poor. The law—as he shows—has had no good days for the poor; and the poor "are suffering today at the hands of the law, because in the evolution of things we have a lot of old derelict laws made by slave-owners for slaves, by masters for serfs, by landlords for the landless." The book has two characteristics. It is authoritative and it is remarkably well written. It is so well written, so outspoken and so compelling in interest that at other times than when England is engaged in a great war it could not have failed to mark the beginning of a propaganda to secure the reforms that the author proves are long overdue. There is a bibliography of seven closely printed pages which is unique in arrangement, and admirable as a guide to much of the social history of England from the days of the Stuarts to the socialistic legislation of the parliaments of 1906–1914.

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Emplois industriels des Métaux précieux. By ANDRÉ TOUZET. Paris, Giard and Brière, 1911.—xxix, 696 pp.

This comprehensive work, which has been honored with a gold medal by the law faculty of the University of Bordeaux, fills an important gap in the literature of the precious metals. For, despite the great mass of material that has been published in recent years upon the monetary use of the precious metals, there has been little of a reliable character upon the industrial uses—uses which now employ annually something like one-fourth of the gold produced, and one-third of the silver.

Mr. Touzet's work is divided into four books. Book i (117 pages) is devoted to a critical discussion of the statistics of the industrial consumption of the precious metals throughout the world. Book ii (41 pages) discusses the influence of the industrial consumption of the precious metals upon the purchasing power of money. This is the least satisfactory part of the work. The author is not at his best in discussions of theory. Book iii (227 pages) discusses legislation concerning the precious metal industries. It is devoted largely to the subject of standards of fineness, with particular reference to the protective legislation contained in the *Loi de Brumaire*, and to proposals for revising this law. Book iv (293 pages) is an account of the economic conditions prevailing in the precious metal industries of France and Germany, and discusses such subjects as the localization of the industry, machine versus handwork, labor conditions, the demand for products at home and abroad, and factors in the competition between France and Germany.

Passing now to the topics that will particularly interest American economic students we may consider briefly three. The first is the statistics of the precious metals. The author bestows unstinted praise upon the statistical work of Soetbeer in his *Materialen* (pages 47–49), but cites evidence and testimony to show that the figures for the world consumption of the precious metals prepared annually for the years since 1878–1879 by the United States director of the mint are carelessly computed, inaccurate, and at times self-contradictory (page 50–51, 80–83). He is able to obtain figures for individual countries in which he has greater confidence than in the American figures, but his efforts to prepare more reliable figures for the world at large were unavailing. The American figures have the merits of generality and continuity. Therefore for world totals he deems it wise "to utilize the general statistics of the American mint, such as they are, doing so, however, with the strong reservation that they are looked upon as defective instruments whose employment is dangerous" (page 94–95).

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A second topic of interest to American economists discussed by Touzet is the so-called "traditional doctrine of compensation." His statement of the doctrine is that

> an increasing demand for the precious metals for industrial uses causes an increase in their value in the industrial market and results in the melting of coins; and, inversely, an increasing demand for monetary uses causes an increase in the purchasing power of money and results in the bringing to the mints of raw metal or objects manufactured from the precious metals. This constant communication results in a state of equilibrium between the merchandise metal and the money metal [page 152].

Passing over the author's treatment of this doctrine as it applies to silver, as being relatively unimportant since free coinage of silver no longer exists to any extent, we may note his conclusions with reference to gold. The figures he uses to test the truth of the doctrine, i. e., price-index numbers and index numbers for the industrial consumption of gold, give contradictory results. Those for the period 1880–1893, when prices were falling and the industrial consumption of gold was increasing, are contrary to the traditional doctrine; while those for the period since 1897, when both prices and industrial consumption were rapidly rising, conform to the doctrine. After again questioning the validity of the American figures which give these contradictory results, the author maintains "that such a relation [as that expressed by the traditional doctrine] does not exist, and that from the juxtaposition of the two phenomena we cannot conclude that the one is the cause of the other" (page 166). He finds further that comparatively little elaborated gold is brought to the mint for coinage, and, on the other hand, that the amount of coin that is melted down is comparatively small. As militating against the traditional doctrine he finds the fact that the public are not conscious of variations in the value of gold, and would therefore not voluntarily buy more jewelry when gold was cheap and less when it was dear, and the further fact that there is too much of a loss involved in bringing jewelry to the mints to permit the practice to be at all common. The author states his conclusion as follows:

> We believe we have demonstrated the vanity of the classic thesis and at the same time the danger of *a-priori* theories which press upon good sense. In our opinion the industrial consumption has not a compensating effect upon the purchasing power of money, but on the contrary an aggravating effect. The theory which we believe to be correct is precisely the traditional doctrine reversed. We believe that when the purchasing power of money declines, that is to say, when prices rise, the industrial consumption falls; and in-

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versely, that when the purchasing power of money is increased, that is to say, when prices fall, industrial consumption rises [page 170].

This theory, however, the author does not substantiate, while he mentions one important fact that works in the opposite direction, i. e., that a rise in commodity prices stimulates trade in general, including trade in objects of luxury, while a fall in general prices nearly always brings stagnation in business during which the jewelry business and the goldsmith's business are among the first to suffer. This fact conforms to the compensatory doctrine and to the author's earlier conclusion that "the industrial consumption of the precious metals is a direct function of the periodic movements in general prosperity and of the condition of a country's national riches" (page 105). It is inconsistent with his contention that the true doctrine is the reverse of the compensatory theory. Having thus led the reader hither and thither, the author loses him completely when he says: "We are brought to the conclusion that the influence of the industrial consumption of the precious metals upon the purchasing power of money though theoretically possible is practically nil" (page 171). Just how an annual industrial consumption of gold amounting to over $100,000,000, a consumption as variable as to serve (along with that of silver) as a barometer of prosperity (pages 98 and 105), can fail to have an influence upon the value of gold as expressed in prices is difficult to understand. Certainly Mr. Touzet has given no adequate evidence for such a strange conclusion.

In the jewelry industry the three countries that are the chief rivals for the world's markets are France, Germany and Switzerland. The French easily hold the artistic leadership, but have been too self-satisfied and not sufficiently energetic in their conquest of foreign markets. Germany's art, on the other hand, is "official art, the art of the school, negative of all personality and all originality" (page 415). Germany, however, is efficient, calculating and aggressive, and has accomplished wonders in the development of her export trade. At the side of France and Germany, Switzerland is daily pushing herself forward in the export trade, particularly in certain specialties such as watch-cases and chains. She combines in a degree the efficiency of the Germans and the artistic sense of the French. As for England the author quotes Ruskin: "The apostle of beauty expires at the door of the English shops." The industry in Great Britain seems to him to be tired (page 420). Of the industry in America, he says:

> The workmen, all Americans, wield the hammer skilfully and give proof of great ability in the execution of articles without soldering, worked and

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fashioned after the old traditions of the handicraft. The work of the chasers reveals an indisputable mastery. But the style, "*nouveau monde*," of the American products is disconcerting to the eye. For this reason the clientele for American jewelry for a long time to come would seem to be limited to the people of the United States. There is no fear that the international market will be invaded by the variegated jewels, and the heavy gold pieces which are in favor on the other side of the ocean [pages 421–422].

One of the most valuable features of the book is a 29-page bibliography reasonably complete for works in French, German, English and Italian. The reviewer has noted a few important omissions.

On its mechanical side Mr. Touzet's book is open to criticism. The charts are often difficult to read, there are too many lines, the lines are often dim, and are so similar that it is very difficult to distinguish them. A book so large and covering such a variety of topics has its usefulness greatly impaired by the absence of an index.

E. W. KEMMERER.

PRINCETON UNIVERSITY.

Principles of Insurance. By W. F. GEPHART. New York, The Macmillan Company, 1911.—xv, 313 pp.

The development of insurance instruction in our universities in recent years has been greatly hampered by lack of adequate text-books designed to meet the needs of the elementary student. This has been especially true in life insurance. Several text-books dealing with actuarial science and intended for the beginner have appeared, but invariably they have been written by actuaries to whom the complex problems dealt with have become simple through long practice, and the authors have been handicapped by lack of experience in teaching. The result is that the most elementary and simple of these text-books have been too difficult for the average student, and progress with them has been slow. Other information of value to the beginning student in insurance, while existing in great quantities, has been so scattered in periodicals, addresses, pamphlets and government investigations as scarcely to be available.

Principles of Insurance, by Professor Gephart, is the first attempt made in the United States to supply the student with a text-book suited to his needs. It is admittedly an experiment, and the author suggests, in explanation of possible errors in treatment, that he had no precedents to follow. The greatest fault of the book, in the opinion of the reviewer, comes from the compression, into a space of 313 pages, of

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material the adequate discussion of which for the university student should require a book twice the size. On account of its brevity, the book will probably be found much more valuable for high school work than for college instruction.

Criticism of the method of treatment used offers difficulties, because instruction in life insurance is still in such an elementary stage that there can scarcely be any agreement as to what subjects should be most emphasized and what least. But from the experience gained in dealing with insurance classes in the University of Pennsylvania it is felt that the devotion of a single chapter of twenty pages to the analysis of premium computations is entirely inadequate to a proper understanding of scientific rate-making and the knowledge of different kinds of policies that comes therefrom. Indeed, it may be questioned if the later subjects of reserves, surplus, dividends and investments can be properly understood without a reasonably careful study of rate-making.

For other chapters more can be said. Chapter ii, on the theory of life insurance, contains an excellent discussion of the factors necessary to make certain the application of the theory of probabilities, as for instance the necessity of a homogeneous group and the necessity of limiting the amount risked on a single life. The chapter on mortality tables contains an excellent summary of the methods of constructing these tables. The discussion of selection of lives in chapter iv is one of the best in the book.

Insurance for the wage-earners is excellently summarized in a chapter which traces the change in the position of the laborer from early industrial society to the present time, and then describes different methods of insuring him against industrial hazards, such as old-line industrial insurance, voluntary organizations of workers, fraternal societies, trade union insurance, relief departments of large corporations, employers' liability insurance, and government insurance of industrial classes. The impression left from the statement of the law of negligence, the development of which brought employers' liability insurance into being, is that this law, as elaborately modified by the several employers' defenses, finds definite expression in Roman law. It is hardly believable that the author could have intended this, for it is well known that the development of employers' defenses began with the case of Priestly *v.* Fowler in England in 1837.

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Vers le salaire minimum. By BARTHÉLEMY RAYNAUD. Paris, Recueil Sirey, 1913.—xi, 518 pp.

M. Raynaud has presented us with an extensive treatise on the minimum wage, written mainly from an historical and administrative point of view. As he explains, he is interested neither in making a new plea for an old cause, nor in adding a new theory where none is wanted. His purpose is to trace the evolution toward the ideal of the living wage as it has expressed itself in the facts of contemporary social life.

In this respect M. Raynaud has succeeded very well. His large volume is an exhaustive and fairly systematic survey of the main developments toward a living wage throughout the entire world. He traces the evolution of the minimum-wage idea in the contractual relationships of labor unions and employers, in public contract work, in work carried on directly by the state, and finally in measures of social legislation. The material presented is gathered from the original sources of the principal countries of the world, mainly, however, from England, France, Germany, the United States and Australasia. Conditions are described in detail in those countries and in those industries where progress toward the minimum wage has been greatest.

On the basis of his extensive survey, M. Reynaud comes to the conclusion that the minimum wage is gaining ground everywhere and will in time become a recognized principle of industrial life. The conception of the minimum wage which is developing, according to M. Raynaud, is a complex one, based on a synthesis of the ideas of the just wage and of the minimum standard of living. The tendency is not toward a fixed amount, but toward a flexible and variable rate (piece-rate) which would secure for the worker a weekly wage sufficient for a decent standard of living. M. Raynaud also expresses his satisfaction with the tendency of the trade unions to assume greater control in matters of wages. In his opinion the problem of the minimum wage is mainly a problem of the organization of labor, and he believes that the trade unions will gradually bring the greater part of the field of industry under the domination of the minimum-wage idea. But where organization does not exist or is too weak, M. Raynaud considers the intervention of the law inevitable and desirable.

In several chapters M. Raynaud discusses the economics of the minimum wage and reviews the usual objections to the idea. The book has a good index and several appendices containing documents relating to the literature of the subject.

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English Economic History : Select Documents. Compiled and Edited by A. E. BLAND, P. A. BROWN, and R. H. TAWNEY. London, G. Bell and Sons, Limited, 1914.—xx, 730 pp.

Messrs. Bland, Brown and Tawney offer an apology for adding another to the existing historical source books. No apology was necessary; for this compilation of 730 pages on English economic history from 1000 to 1846 cannot fail to be of service to students working in any part of this period. The book is divided into three parts—part i extending from 1000 to 1485; part ii from 1485 to 1660; and part iii from 1660 to 1846. Each part is subdivided into sections. Those of part i are the early English manor and the borough, the feudal structure, the Jews, the manor, towns and guilds, the regulation of trade, industry and commerce, and taxation, customs and the currency. Part ii deals with rural conditions, towns and guilds, the regulation of industry by the state, the relief of the poor and regulation of prices, and the encouragement of industry and commerce; while for the period from the Restoration to the adoption of free trade, the sections are industrial organization and social conditions, agriculture and enclosure, government regulation of wages, conditions of employment and public health, combinations of workmen, the relief of the poor, and finance and foreign trade. In all, 344 documents have been reprinted—136 of the period from 1000 to 1485; 107 of the second period; and 91 of the period from 1660 to 1846. Almost every conceivable source has been drawn upon for these documents; and particularly good use has been made of the journals of the House of Commons, reports of parliamentary committees, evidence before these committees, and histories, biographies, and memoirs.

It is not difficult, of course, to suggest how a volume of this kind might have been extended. Any large extension would have made the book unwieldy and necessitated its publication in two volumes. But a second edition will surely be called for before long. Then the compilers may perhaps see their way to take note in part i of the tin industry and the stannary courts; and in part iii embody some of the documents concerning transportation of convicts and the press-gang system. Galt's correspondence with the Duke of Newcastle concerning the right of the United Provinces of Ontario and Quebec to frame a protective tariff without regard to the interests of British trade, came twelve years after the adoption of free trade by England in 1846. But this correspondence is the charter of the fiscal freedom of Great Britain's oversea dominions, and some brief mention of it would admirably round out the

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last section of part iii—the section devoted to finance and foreign trade. The index is on a generous scale; and the arrangement of the book—divisions, grouping of sections, and numbering of documents—lends itself to easy use for reference.

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Railroad Finance. By FREDERICK A. CLEVELAND and FRED WILBUR POWELL. New York, D. Appleton and Company, 1912.—xv, 463 pp.

Corporate Promotions and Reorganizations. By ARTHUR S. DEWING. Cambridge, Harvard University Press, 1914.—ix, 615 pp.

All students and teachers of the subject of corporation finance will be greatly pleased with the publication of these two studies in a field to which comparatively little attention has been given.

Railroad Finance is the second of two volumes upon the subject of railroads in which Messrs. Cleveland and Powell have collaborated, the first volume, *Railroad Promotion and Capitalization*, having appeared in 1909. As Dr. Cleveland states in his brief preface, a preliminary draft of *Railroad Finance* was used as a series of lectures delivered at the Wharton School in 1901 and 1902. It will also be noted that in the chapter entitled "Protection of the Corporate Estate," the collaborators have drawn heavily upon the second of Dr. Cleveland's lectures on "The Management of Capital Account," delivered at Harvard in 1908 (lecture xiv of the Harvard Lectures on Corporation Finance). Chapter i in *Railroad Finance* is the same as chapter i in *Railroad Promotion and Capitalization*, while the section on underwriting and holding syndicates in chapter ii of the former volume is identical with the section of the same title in chapter xvii of the latter. The balance of chapter ii of the later work duplicates in condensed form much of the material contained in the earlier book.

Railroad Finance is divided into seventeen chapters, and an eighteenth devoted to a critical examination of the available materials for the study of railroad finance and an admirable bibliography of some sixty pages. To a considerable extent the treatment is historical in character in that the various phases of financing are most frequently approached from this angle.

Probably the most original and constructive portion of the volume is to be found in the treatment of capital. The authors think that the term "capital" of a corporation should "be confined to those assets

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of the corporation which have been provided and which are intended for continuing productive use." From this standpoint capital assets and liabilities are considered, the different classes of securities are examined and the subject of capitalization discussed. The concluding chapter of the volume on over-capitalization is written with the same definition in mind. The volume shows a great amount of careful and extensive research and is a valuable addition to the existing works in this field.

Dr. Dewing's volume, issued as one of the Harvard Economic Studies, is very different in character from the work of Messrs. Cleveland and Powell, in that it is an intensive study along lines similar to those followed by Professor Stuart Daggett some years ago in his *Railroad Reorganization*, which also appeared as one of the Harvard studies. Dr. Dewing's work deals solely with that class of enterprises commonly known as industrials. The use of the word "industrial" rather than "corporate" in the title of the volume would have been more accurate. A further point in regard to the volume, which is in no sense conveyed by its title, is that the organizations studied are practically without exception consolidations.

As indicated, the book consists of a series of intensive studies of the promotion of a number of organizations (formed principally in that heyday of consolidation, 1897–1903) and an account of their subsequent history, including reorganizations. There is little that can be said about the work except that it deserves a high degree of praise. The materials are drawn largely from sources. Each is detailed and complete and has involved an enormous amount of research as well as personal interviews with persons either familiar with or personally concerned in the operations chronicled. The author's conclusions, based upon these studies, are to be found in the three concluding chapters of the volume entitled "The Promotion of Consolidations That Have Undergone Reorganization", "The Conditions and Causes Leading to Reorganization," and "Reorganization Expedients." These conclusions are at once interesting and valuable, though it is quite possible to quarrel with several of the statements in chapter xx dealing with the stages in the formation of an industrial consolidation. To do this, however, would be to quibble over a very trivial point. In conclusion, the reviewer is of the opinion that Dewing's *Corporate Promotions and Reorganizations* will become as much of a standard work in corporation finance as Professor Daggett's work on *Railroad Reorganization* already is.

W. H. S. STEVENS.

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Women Workers in Seven Professions. Edited by EDITH J. MORLEY. London, George Routledge and Sons, Limited, 1914.—xvi, 318 pp.

Thirty years ago teaching was practically the only professional work done by women. Today women are numbered in the hundreds and, in some instances, thousands, in almost every profession. Women lawyers, for example, increased in number from seventy-five to over five hundred between 1880 and 1910; doctors from two thousand to fourteen thousand; clergymen from one hundred and sixty-five to over nine thousand. Facts such as these eliminate the question whether women should or should not enter all professional fields. They are there.

The women, however, who elect professional careers are confronted with many obstacles. Frequently there is the unwillingness, or the inability, of their parents to pay for the expense of a training that may never be commercially justified if daughters marry, as of course they should. Coupled with this situation is the scarcity of fellowships and post-graduate scholarships for women. If there is no financial difficulty, there is the fact that the professional and technical schools are not as generally open to women as to men, and their opportunities for training are therefore much more limited. Social prejudice against employing women, inequality in the money returns for similar service, the slowness of promotion in many lines of work coupled with duties of a routine or monotonous character—one or the other of these discouragements professional women must face over and over again. The traditional domestic obligations of woman further complicate the situation. If she is single, she may have to feel the wear and tear of living in a home where there is little sympathy with her ambitions, and where many demands are made upon the time and strength that are equal only to her professional work. If, on the other hand, she is married, there is likely to be the more serious question of combining the responsibility of home-making and child-bearing with her "career."

A committee of women members of the Fabian Society has made an examination of these difficulties that make up the problem of women's economic independence, and the results are put forth in *Women Workers in Seven Professions*. The book is a survey of the economic position of women as teachers, doctors and dentists, nurses, sanitary inspectors and health visitors, civil service employees, clerks and secretaries, and actresses. By means of lectures by women representatives of the respective professions followed by discussions conducted exclusively

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by women, the committee sought to obtain a frank expression of opinion from the women themselves on their physical disabilities as workers, and on the social conditions affecting their economic activity. The results include abundant specific data concerning the necessary qualifications for the work of the several professions, the opportunities for training and its cost, the remuneration that may be expected etc. In addition to these questions, the economic disabilities of English women (which might also read *American* women) are stated clearly, frankly, and exhaustively.

The solution of the various problems is much less definitely indicated, and those who are looking for ready-made remedies will probably be disappointed. For example, in the question of discrimination against women in university appointments, the committee says: "It seems, as far as can be judged, that future opportunities are likely to occur when the right candidates for posts are there in sufficient numbers to make their exclusion on the ground of sex, already seldom explicitly stated, impossible or inexpedient." And again: "University women teachers can best help to secure equality of opportunity by rendering themselves indispensable members of the body corporate—they must remember that it is the business of a university to make contributions to learning as well as to teach." This "putting it up," so to speak, to the women themselves is characteristic of the general comment of the committee and the contributors.

On the question of "equal pay for equal work" one speaker suggested that "next to the parliamentary vote, the most powerful lever in raising the condition of women will be the entrance into the labor market of a considerable number of women so trained that they will always 'play the game,' and at the same time sufficiently remote from want to be able to resist the sweating employer." Every speaker exhorts women to uphold this principle of payment.

On what many consider the most baffling problem of all, viz., how women can combine professional work and the care of children, the present study sheds no light. The committee, however, is unanimous in repudiating celibacy for the professional woman and they promise another publication which shall consider the "practical steps toward such modification of social conditions as will enable women freely to use and develop their physical and mental capacities in productive work, while remaining free and fully able to exercise their special function of child-bearing."

There are those who will challenge the assumption of the desirability and the necessity of economic independence for women which under-

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lies the whole study. The committee is content to let this assumption stand with but scant defense. But granted the point of view, the book should realize the authors' hope of arousing "deeper interest in the vigor and energy with which professional women are now striving to make good their economic position." The discussion throughout is on a high plane, and sanity and judgment prevail in its counsel.

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Interpretations and Forecasts. A Study of Survivals and Tendencies in Contemporary Society. By VICTOR BRANFORD. New York, Mitchell Kennerly, 1914.—424 pp.

Mr. Branford is of that English school of sociologists who consider their subject as a fine art as well as a science. His master is that amazing personage, Professor Patrick Geddes of Edinburgh, botanist, zoölogist, art-critic, town-planner, writer of pageants, and founder of the "Outlook Tower," the world's first sociological laboratory. It is he who has carried on the Ruskin and Morris tradition, broadening its scope to meet the demands of city development and the claims of the eugenics movement of today. And, like Professor Geddes, Mr. Branford is interested in sociology as applied science, as a body of knowledge for groups and institutions and folkways from which practical implications can be made for the conscious and resolute shaping of the future. He writes of "sociological science beginning to function as spiritual power."

The present book is a collection of addresses delivered before women's clubs, workingmen's educational associations, and societies for local betterment. It discusses current tendencies in education, drama, city development, from the point of view of the Good Race and the City Beautiful. Necessarily somewhat general and soaring in his treatment, Mr. Branford is extremely good reading for political scientists with imagination, who let their minds play not only upon how our social institutions have developed and what we can analyze them into, but also what we can do with them to serve the higher artistic and life-enhancing social purposes which, now that supernatural ends have been generally abandoned, have become for most men of good-will the ideals into which they interpret their world. In this light the work of the sociologist will be to guide with expert and accurate hand the growing good-will of the groups and organizations which are tackling the problems of social disorder and maladjustment.

To give dignity and beauty to the life and labor of woman in the home,

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of man in the factory and field; to subordinate the economics of the market to the ethics of the church; to replace the limitations or exaggerations of sects and the pedantries of academies by the realities of a living culture; to clean up the débris and confusion of the industrial cities and enrich their civic life with order and beauty—to achieve these ends is the purpose of innumerable organizations concerned with the task of betterment and uplift. These are concentrating around a double focus. The Town-planning endeavor is one focus, and the culture of Child-life is the other. Round these two complementary centers of interest are developing new social situations, and of high coördinating power. The care of the living child and the planning of the city—here surely are the natural, definite and concrete objectives which tend spontaneously to concentrate the emotion of women and artists, the knowledge of scientists and philosophers, the thought and care of educationists, the energies of labor, the power of statesmen.

Poetical as this may sound to many minds, it does actually grip something very like reality in the tendencies of the day. In this country the numerous social surveys of cities, the town-planning reports and schemes, the sociological studies of typical communities conducted by universities and churches, all speak of a new sense of the community as a living whole, of a determination that our sociological knowledge shall issue forth in applied civic art. It speaks of a new communal self-consciousness. Similarly, the newer tendencies in education, the wide interest in more democratic, more genuinely "public" forms of the public school, the application in schools in various parts of the country of philosophies like Dewey's "instrumentalism," all suggest the reality of this other focus of which Mr. Branford speaks. He has given us the very valuable clue to our *Zeitgeist*.

To those of us who take our sociology more or less emotionally this clue is not only valuable but prophetic. Before I had read Mr. Branford I had decided that the most significant sociological institutions I had seen during the past year were the small town-planned German municipality such as Rothenburg, and the public school system of William Wirt's in Gary, Indiana. The one develops the social and communal resources; the other the capacities of the individual, cultivating his powers and giving him the opportunities for a rounded and expressive and efficient life in his community. Mr. Branford's book confirms this intuition of mine. I should like to see these categories and these "focusses" of his generally accepted, strongly believed and worked for.

RANDOLPH S. BOURNE.

NEW YORK CITY.

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RECORD OF POLITICAL EVENTS

[From November 5, 1914 to May 1, 1915]

I. INTERNATIONAL RELATIONS

THE EUROPEAN WAR— On the **western front**, the German offensive along the Yser (see last RECORD, p. 735) was abandoned early in December. The next four months witnessed a series of frontal attacks, at first by the Allies and subsequently by the Germans, at widely separated points along the whole line, for the control of strategic points. The success of these attacks varied, but they were without exception extremely costly to both sides, while in no case did the capture of the objective point significantly affect the general situation. To military critics the lesson of these months seemed to be that only after a prolonged process of attrition had considerably weakened one side or the other, could a decisive result be expected on this front. On the **eastern front**, the Austro-German drive toward Warsaw (see last RECORD, p. 736) compelled the withdrawal of the Russian troops from Galicia, Bukowina and East Prussia, though the drive itself was repulsed early in November. The renewal of the Russian invasion along the whole front, and particularly in the direction of the Carpathian passes, was similarly checked by an enormous German movement into Poland, terminating in February, in which unprecedented losses were admitted on both sides. The repulse of the Russian offensive was but temporary, however, and March again saw fierce fighting along the eastern slopes of the Carpathians, while on March 22, after the repulse of an Austrian relief force, the fortress of Przemysl, which had been invested since September, fell. This released large Russian forces for the advance upon the Carpathians. By the end of April, these forces had passed over the crests of the two principal passes but had not yet succeeded, in spite of unprecedented sacrifices of life, in crushing the Austro-Hungarian defense. —Following the withdrawal of the Russian offensive in November (see *supra*) a heavy concentration of Austrian troops caused the hurried retreat of the Serbian army into the south, involving the evacuation of Belgrade and all the northwest corner of Serbia. The withdrawal of several Austrian corps to meet the renewed Russian advance upon the Carpathians was, however, immediately followed by a remarkable Serbian offensive which by December 15 had recaptured Belgrade and completely cleared Serbia of Austrian troops. It was announced in Vienna that the campaign against Serbia would for the present be abandoned. Despite their victory, the Serbian armies were in no condition to resume the offensive and April passed without any renewal of activity on this front.—The active entry of **Turkey** into the war was signalized by the proclamation, November 27, by

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the Sultan of a Jehad or Holy War to be waged by all Mohammedans against "the enemies of Islam." As late as May, however, no significant response to this appeal was evident in any non-Turkish quarter of the Mohammedan world. A Turkish attack in force on the furthest Russian border, in the Caucasus, having for its objective the oil field of Batum, was easily routed; but a raid into the Russian sphere of influence in Persia succeeded in occupying Tabriz and the surrounding region. A simultaneous expedition against Egypt aimed also, it was believed, at the destruction of the Suez Canal, achieved no lasting results; on the other hand a British force ascended the Euphrates valley as far as Kurna, while allied warships along the Ægean and the Russian fleet in the Black Sea did damage to Turkish coasts and shipping. Finally, at the end of February, an Anglo-French fleet of more than fifty warships began the attempt to force the passage of the **Dardanelles**, and to reduce Constantinople. Late in March the heavy losses inflicted upon the fleet by the Dardanelles defences made it apparent that their reduction could be accomplished only by the coöperation of land forces. In the last days of April, British and French forces which had been assembled in Egypt were landed at the eastern end of the Gallipoli peninsula.—Beginning in March, the bombardment of the Turkish port of Smyrna was undertaken by an Anglo-French fleet.—Successive measures undertaken by the British Admiralty against the **commerce of neutrals**, and particularly that of the United States, with Germany, in violation of practices of international law, were defended by the British government in answer to a protest by the United States (see *infra*, p. 351) as necessitated by the changed conditions of modern warfare. Chief among such measures were the extension, by many items of major importance, of the list of contraband, both absolute and conditional, and the seizure, on the high seas, of neutral vessels bound for neutral ports, and their detention in British ports for long periods, pending their search and the determination of their final destination, the belief that, though bound for neutral ports, a cargo was ultimately destined for the enemy being held by the British Government to be just cause for condemnation. Finally, following the promulgation of the German decree of February 1, confiscating all grain in private hands (see *infra*, p. 371), the British government on February 2, in violation, it was alleged by Germany, of the Declaration of London, gave notice that thenceforth all shipments of food-stuffs to Germany would be considered as absolute contraband, and made known its intention of capturing and bringing before a prize court the "Wilhelmina," an American vessel then on its way to Germany with a cargo consigned to private owners. Two days later the German Admiralty announced that after February 18, it would, in reprisal, treat all the waters around Great Britain, including the whole of the English Channel (but excluding the strips of sea immediately adjacent to Holland and the Scandinavian countries) as within "the **zone of war**" and that "all enemy merchant vessels encountered in these waters will be destroyed, even if it will not always be possible to save their crews and passen-

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gers." Neutral vessels were also warned that "in view of the misuse of neutral flags ordered by the government of Great Britain, and the hazards of naval warfare," they too were exposed to great danger. This unprecedented action was declared by the German government to have been necessitated by the action of Great Britain in attempting, by the "paralyzation of German commerce . . . in a way that defies all international law . . . through starvation to doom the entire population to destruction." Protests from the Dutch and Norwegian governments, and the warning of the United States that the German government would be held to "strict accountability" for any destruction of American ships or loss of American life which might result from its operations were met with an offer by the German government to reconsider its decision if the protesting neutrals would induce the British government to withdraw its order declaring food contraband; and, to insure that food permitted to pass by Great Britain would not be diverted to the military, the German government proposed that representatives of the neutral countries shipping such food should supervise its distribution. Proposals in this direction by the United States were however rejected by Great Britain, on the ground of impracticability; and on February 18, accordingly, German submarines and mine-layers began a campaign of destruction of merchant vessels, which, by the end of April, had resulted in the loss, with their cargoes, of 45 British, 4 French and 4 Russian vessels, besides 16 neutral vessels, 4 Dutch, 2 American, 8 Scandinavian, 1 Greek and 1 Chinese. Protests by the neutral countries affected brought from Germany only a reiteration of its decision. In most cases the crews and passengers of the torpedoed vessels were given an opportunity to take to the boats. In one of the cases, where no such opportunity was given, that of the British passenger steamship "Falaba," one of the many passengers drowned was an American citizen. By the end of April, however, five weeks had elapsed without the American government having made protest to Germany.—Following a declaration of policy by Premier Asquith on March 1, the British government on March 15 issued an Order in Council declaring that Great Britain and her allies would condemn or requisition the cargo of any merchant vessel destined for Germany, or carrying a cargo of German manufacture. In a note to the United States of the same date, the British government explained its policy as being, in effect, a **blockade**, but as designed to bear with less burden on neutrals than would an ordinary blockade, in which the right of confiscating blockade-runners would have obtained. **Naval warfare** in western waters included two German raids upon the English North Sea coast, of which the former, in December, inflicted heavy damage on the towns of Scarborough, Hartlepool and Whitby, and the latter, in January, was repulsed with the loss of a German cruiser. In an engagement on December 9, off the Falkland Islands, three of the five German cruisers engaged were sunk, and the two remaining were pursued and subsequently sunk in the Pacific. A sensational raid upon Cuxhaven by British warships, reinforced by a flotilla of

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submarines and a fleet of sea-planes and aeroplanes, in February, while apparently ineffectual in inflicting serious damage, was alleged to demonstrate the complete ability of the British navy to reach the German coast unhindered whenever it should so choose. Several **aerial raids** upon both French and English towns, none of which inflicted significant damage, were made sporadically, but the expected Zeppelin raid upon London, in expectation of which the city had been darkened almost since the beginning of the war, did not take place. Anglo-French aerial activity was signalized chiefly by an apparently successful raid upon the Zeppelin construction sheds at Wilhelmshaven. In **Africa**, Anglo-French attacks, both land and naval, upon German East Africa, continued, with results variously reported. In German Kamerun, French forces occupied several posts, intending apparently a complete envelopment of the colony. Late in February an invasion of German Southwest Africa by the army of the South African Union was announced. Reports of friction between the representatives, both diplomatic and military, of the **Dual Alliance**, and of serious disaffection throughout Hungary repeatedly emanated from ostensibly neutral sources. Especially persistent was the report that Count Tisza, the Hungarian prime minister, had personally demanded of the Kaiser adequate German defense of Hungary's borders against Russia as the only alternative to the negotiation of a separate peace by Hungary. Rumors of the unpopularity of the **Turko-German alliance** in the Turkish capital also persisted until the failure of the first attempt of the Allies to force the Dardanelles in March (see *supra*, p. 346). In March was announced the completion of arrangements by the powers of the **Triple Entente** for the extension of joint loans, totaling $270,000,000, to Belgium, Servia and Montenegro. In Great Britain the sentiment was widely expressed that the advance to Belgium, while formally a loan, should be regarded by the Allies as a donation.—Following the second general repulse of the Russian forces, and, it was inferred by many, because of it, the British government announced, in substance, that it was in sympathy with Russia's aspirations for an ice-free port, that is, Constantinople.—The relations between **Japan** and her western allies were widely discussed, particularly in France, because of the propaganda conducted there by prominent publicists in favor of inviting Japan to send troops to assist her allies on the western front.—The declaration of the British protectorate over **Egypt** (see *infra*, p. 375) was immediately recognized by France, and in return, Great Britain declared its adherence to the **Franco-Moroccan** treaty of 1912, giving France a protectorate over Morocco.

GENERAL EUROPEAN RELATIONS.—The efforts of both belligerent alliances, and of large bodies of public opinion in the neutral countries themselves, to secure the **participation of Italy and the neutral Balkan States in the war** had not, by the end of April, effected any definitive action. The efforts of the Dual Alliance to secure the support, or at least the continued neutrality, of **Italy**, were, it was reported, certain to fail because of

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the refusal of Austria-Hungary to meet to any extent Italy's demand for the cession of the Trentino, Trieste and Istria. On the other hand, the negotiations of the Allies were reported to have encountered difficulties in the unwillingness of Russia, on behalf of Serbia, to consent to the guarantee to Italy of the entire Dalmatian coast in case of victory. Nevertheless it was freely predicted, in April, in the Allied press, that Italy's participation on the side of the Allies was inevitable. Tending to confirm this prediction were the continuance of Italian mobilization, the prohibition of the export of certain foodstuffs to Germany, the suspension by Italy of all mail and telegraph communication with Austria, repeated reports of anti-Austrian demonstrations, and, on the other hand, a heavy Austro-German concentration on the Trentino frontier. The Allied attack on the Dardanelles, presaging Allied domination in the Mediterranean, was also regarded by many as making certain that Italy's entry into the war was merely a question of time.—In December, the long-standing antagonism between **Italy and Turkey**, already aggravated by the reports of Turkish activity in Tripoli (see *infra*, p. 373), seemed likely to be brought to a head by an outrage committed by Turkish officers in the Italian consulate at Hodeida, against the British consul, who had sought refuge there. Eventually, however, a complete apology by the Turkish government closed the incident.—The **participation of Greece and Rumania** in the war, made likely partly by their alliance with Serbia, and still more by the prospect of territorial aggrandizement at the expense of Austria and Turkey, was held in check by the pacificist party in those countries and by the fear that Bulgaria would seize the opportunity to recover the territories taken from her by the Treaty of Bucharest. **Greco-Bulgarian** and **Rumanian-Bulgarian** conversations looking toward a satisfactory territorial re-adjustment came to naught since Bulgaria, it was understood, had demanded of Greece all of its Macedonian territory including Kavalla, and of Rumania of all the Dobrudja; while **Serbo-Bulgarian** friction was intensified by repeated raids of Bulgarian irregulars over the Serbian border, by desertions from the Serbian Army, into Bulgaria, of conscripts from those portions of New Serbia which were formerly Bulgarian, and by reports of a reign of terrorism directed by the Serbian officials of the Strumitza region against the Bulgars resident there. The remittance, in January, of a large **loan by German bankers to Bulgaria** was cited as convincing proof that Bulgaria had definitely decided to cast her lot with the Dual Alliance and Turkey; but it was asserted, on the other hand, that this remittance was merely the final instalment of a loan contracted long before the outbreak of the war. The Allied attack upon the Dardanelles, however, opening to Bulgaria the prospect of adding Thrace and Adrianople to the other territorial concessions which it might gain from the Allies, greatly reinforced the large body of Bulgarian opinion which favored participation, jointly with the other Balkan states, on the side of the Allies.—Meanwhile, **Greco-Turkish** relations continued to be strained by the oppression of Greek residents in Asia Minor,

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especially during the mobilization and the requisitioning of supplies incident thereto.—A strengthening of the ties between Greece and Rumania was presaged by the betrothal, announced in February, of Crown Prince George of Greece and Princess Elizabeth, eldest daughter of the King of Rumania. —Following fresh disorders in **Albania** (see *infra*, p. 374) the Italian government, on December 25, landed a considerable military force at Avlona, with the declared intention of protecting its citizens and its commercial interests there, and also to act, as the only signatory of the Treaty of London still neutral, for the maintenance of an autonomous Albania. Italian warships were also stationed at Durazzo. An apparent understanding between Italy and Greece upon this subject was betokened by the withdrawal of a Greek warship from Avlona.—In February an Albanian force, alleged to have been incited by Austro-German emissaries, invaded Prisend, a department of New Serbia.—In November the British government broke away from a precedent four centuries old by dispatching a **mission to the Holy See**, the purpose of which, while not explained, was presumably to counteract pro-German influences in the Vatican.—An **Anglo-Portuguese treaty of arbitration**, to last five years, was signed in December.—A conference held late in December between the kings of Sweden, Norway and Denmark, supposedly for the purpose of arranging a **Scandinavian alliance** to defend the neutrality of the three countries and of the straits connecting the Baltic and Atlantic, failed to result in any definite agreement, so far as was made public.

ASIATIC RELATIONS.—The announcement by the Japanese government, early in January, that it did not consider itself obligated to return Kiau-Chau to China after the war, was shortly followed by the presentation to China of a set of most important **demands** relative to **Japanese participation** in Chinese economic and political life. While the text of these demands was not officially published, apparently authentic versions transpired from Chinese sources. In brief, Japan demanded (Group I) China's assent to Japan's assumption of all German rights in the province of Shantung; (Group II) in South Manchuria and Eastern Mongolia, complete freedom of residence and industry to Japanese, Japanese control of the principal railways, and Japanese power to veto proposed railway franchises, loans, or the employment of instructors or advisors; (Group III) admission of Japanese capital into the Hanyehping Mining Company and the vesting of exclusive privileges in that company; (Group IV) an engagement by China not to alienate or leave any port, bay or island to any third power; and (Group V) the employment of Japanese political, military and financial advisers, the joint police administration of important places, the purchase of at least fifty per cent of all war munitions from Japan, and the toleration of Buddhist propaganda by Japanese. There were in addition several minor demands. In spite of the apparent violation, by these demands, of the terms of the Anglo-Japanese alliance of 1905, declaring for equal opportunities for all nations in China, and of the apparent infringement, by

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the demand for exclusive privileges for the Hanyehping Company, upon British predominance in the Yangtze, the British government, upon interpellation, refused to define its attitude upon the subject, merely reiterating its adherence to the terms of the alliance. Extended conferences, attended by repeated rumors of impending rupture, were held at Pekin throughout February, March and April. While no official announcements were issued, it appeared that while Japan was withdrawing one or more demands in several of the groups, China was yielding on most of the essential points. During the negotiations the Chinese government protested against the movements of Japanese troops in neutral portions of Shantung, and particularly against their alleged interference with Chinese troops operating against bandits. It was reported that bands of Hunghuzes from southern Manchuria were also marauding in Shantung under Japanese leaders.—It became known in December that a **Russo-Mongolian railway** agreement had been concluded several months previously, by which the two governments are to coöperate in the planning and financing of the Mongolian railways.

AMERICAN RELATIONS.—As the **European war** progressed, the United States, vindicating her neutral rights, became involved in controversies with several of the belligerent nations. With Great Britain differences first arose in regard to the definition of contraband, the interruption of shipments to neutral countries on the plea that they might eventually reach Germany or Austria, and the prolonged detention of ships and cargoes in the exercise of the right of search. A vigorous but friendly note was sent to the British government on December 28. The reply, while conceding the principles which underlay the American contentions, referred to the alleged fraudulent acts of shippers, pointed out the practical difficulty of searching large cargoes at sea in heavy weather, and cited statistics showing an increase in certain branches of neutral commerce, which supported suspicions that contraband was passing into enemy countries; but Great Britain undertook, not only to exercise all possible leniency, but to make redress whenever the action of her fleet should unintentionally exceed the limits of international law. A new issue was raised in January when the German steamer "Dacia" was purchased by an American citizen and admitted to American registry. The British ambassador questioned the validity of the transfer and refused the request of the American government that, pending the discussion of the principles involved, the vessel be allowed to make a voyage to Rotterdam with a cargo of cotton consigned to Bremen. The voyage was undertaken, however; and on February 28 the "Dacia" was seized by a French cruiser in the English channel and taken to the port of Brest. Following the use of the American flag by the British steamer "Lusitania" as a ruse for protection against German submarines, a note was addressed to the British government on February 10 describing the act as "an indefensible violation of neutral rights" and holding that the practice would impose "a measure of responsibility" upon Great Britain in case neutral vessels were thereby endangered. The British reply re-

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called the fact that in the Civil War American vessels had used the British flag for a similar purpose and pointed out that no harm could come from the use of the American flag if the Germans followed the usual custom of ascertaining the nationality and character of vessels before capturing them. It was stated, however, that the British government had no intention of advising the use of foreign flags by its merchant shipping as a general practice. When, early in February, Great Britain undertook to treat as contraband all foodstuffs intended for German consumption, inquiry was made as to how this policy would be enforced. The reply announced that ships would be seized anywhere in European waters if their cargoes were of German origin or intended for German use. It was explained, however, that the new policy would be enforced with the least possible damage to neutrals, no confiscation of the vessels taking place.—The situation created by the action of **Germany** in establishing a naval war zone around the British Isles on February 18 caused great concern in Washington, for the proclamation intimated that attacks meant for enemy ships might endanger neutral ships. A vigorous warning was addressed to Germany. Attention was called "very candidly and earnestly to the very serious possibilities of the course of action apparently contemplated" and to the fact that for the destruction of American vessels or American lives the German government would be held to "strict accountability." The German reply did nothing to allay anxiety; it disclaimed all responsibility for "any unfortunate accidents" which might happen to neutral vessels. A suggestion was made that the United States resort to the use of convoys; and Germany expressed readiness to deliberate on measures which might secure the safety of legitimate neutral commerce, remarking at the same time that a solution would be difficult in view of the British use of the American flag and the contraband trade in war materials.—On March 10 the German auxiliary cruiser "Prinz Eitel Friedrich" entered the harbor of Newport News and, after a prolonged stay which brought protests from the British ambassador, finally interned. It became known that the cruiser had sunk in the South Atlantic the "William P. Frye," an American sailing vessel carrying a cargo of wheat to England. The United States promptly entered a claim for damages which Germany accepted subject to proof in a prize court that the vessel and cargo were owned by American citizens at the time of their destruction.—On April 4 the German ambassador delivered to the state department a memorandum criticising the failure of the United States to safeguard legitimate commerce with Germany and condemning as unneutral the sale and export of arms to the allies. It must be assumed, the memorandum declared, that "the United States government accepts England's violations of international law." President Wilson, replying on April 21, asserted that "this government has at no time and in no manner yielded any one of its rights as a neutral to any one of the present belligerents" and that the placing of an embargo on the export of war supplies during the progress of the war would constitute an unjustifiable departure from the principles of strict neutrality.

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The most serious incident since the commencement of the war occurred when a German submarine torpedoed the "Gulflight," an American oil steamer, off the Scilly Islands on May 1, three deaths resulting. Before taking any action in the matter President Wilson ordered a complete investigation of the facts. At the coroner's inquest, held in England, it was established that the "Gulflight" had been flying American colors at the time of the attack.—On February 20 the United States suggested to Great Britain and Germany a basis of agreement for the safeguarding of neutral commerce. It was proposed that all mines should be removed from the high seas except those necessary for the protection of coast defences or harbors, that merchant vessels should be immune from submarine attack and that Great Britain should permit American foodstuffs to reach Germany provided their distribution solely to non-combatants could be ensured. Germany, while accepting most of the points proposed, laid down stipulations which were not acceptable to Great Britain; and negotiations came to nothing.—On November 23, when both Carranza and the Aguas Calientes convention had given assurances that no additional burdens would be laid upon those who had been taxed during the period of occupation, American troops were withdrawn from Vera Cruz, **Mexico**. Several warships, however, remained in the harbor. Towards the end of December conditions of warfare along the international border made it necessary for the United States to address emphatic protests to the chiefs of the opposing factions; and after fifty-two Americans had been killed or wounded in Naco, Arizona, the war department sent strong reinforcements to that locality, announcing to the Mexicans through General Bliss that extreme measures would be taken if another shot fell on American soil. On January 16 Carranza raised an embargo on the exportation of oil from the Tampico region following upon an emphatic protest from Great Britain voiced through the United States state department. The condition of foreigners in Mexico City began to excite apprehension early in March. Two notes, couched in strong and explicit terms, were addressed to Carranza, pointing out the serious consequences which riots and excesses would entail; and in his reply, though resenting the language employed, he assumed responsibility. On March 11 Zapatist soldiers, entering the city, murdered an American citizen, but three weeks later the Aguas Calientes convention paid an indemnity of $20,000 to his widow. President Wilson finally secured the consent of the various Mexican leaders to the withdrawal of foreigners from the city under American auspices.—On December 8 the governing board of the **Pan-American Union** adopted unanimously a project for the creation of a special commission to examine the new problems of neutrals growing out of the European war. The meeting was attended by representatives of every Latin-American republic except Mexico.—In November, when fresh disturbances broke out in **Santo Domingo**, a thousand marines were dispatched from Guantanamo to restore order.—Reports, circulated in November, that the **neutrality** of Colombia, Ecuador, Chile and Peru was being violated

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in favor of German warships in the Pacific by means of wireless and supply stations, were made the subject of representations by Great Britain and France, and of investigation by the countries involved. In every case, apparently, substantial basis for the charges was found, and measures were taken against future violations of neutrality.—The sinking, by a British warship, of the German commerce raider Dresden, in Chilean waters, evoked from Germany a demand upon Chile for reparation. The apology and explanations of the British government were, however, accepted as satisfactory by the government of Chile, and Berlin was so informed.—The decision of Chief Justice White in the **Panama-Costa-Rican boundary dispute** was not satisfactory to the Panama government, and on January 6 it was officially announced that Panama had notified Costa Rica that it would ignore the award.—Despite the well-known desire of the American government to establish a fiscal protectorate over **Haiti**, similar to that obtaining in San Domingo, and its consequent delay in recognizing the new Guillaume government, the French, Italian and German governments, early in April, announced their recognition of the new president and a French loan of $1,000,000 was promised.

II. THE UNITED STATES.

THE ADMINISTRATION.—Speaking at Indianapolis on Jackson Day, January 8, President Wilson took up a position of aggressive partisanship which his speeches had not hitherto displayed. He condemned the Republican party as not having had a new idea for thirty years or known how to do anything but "sit on the lid." He spoke warmly in favor of the pending ship-purchase bill (see *infra*, p. 355) and justified his Mexican policy. Regarding Mexico he said: "The time may come when the American people will be called upon to judge whether I know what I am talking about or not." This was generally taken to refer to the campaign of 1916.—Addressing the American Electric Railroad Association in Washington on January 29, he predicted that "we are upon the eve of a new era of enterprise and prosperity." The main purport of the speech was that suspicion in the business world had been cleared away and that "big business," so long as it obeyed the rules of the game, had nothing to fear simply because it was big.—Before the United States Chamber of Commerce on February 3 he suggested amendments to the anti-trust laws which would permit American business men to combine for the promotion of foreign trade.—The President also spoke before the Associated Press on April 20 and laid great emphasis upon the importance of maintaining strict neutrality, not for selfish reasons, but to qualify for the tasks which would confront the nation at the close of the European war.—The annual report of the **postmaster general** contained three important recommendations: first, the national ownership of telegraph and telephone lines (including those in Alaska, Porto Rico and Hawaii); second, the payment of the railroads for the transportation of the mails by space instead of by weight; and finally

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proclaimed himself still president and began operations, on an insignificant scale, against both Villa and Carranza forces.—Immediately upon the evacuation of **Vera Cruz** (see *supra*, p. 353) by the United States troops on November 24 the city was occupied by a Carranza force. A threatened attack by Villa upon this force was not delivered.—A series of attacks by Villista forces upon places in **northern Mexico** held by the Carranzistas, particularly Tampico, Guadaljara and Monterey, and of counter attacks by the Carranzistas, was now begun, with varying success. A crushing defeat was administered to Villa by Obregon at Celaya on April 2, and, as a consequence, Villa's prestige among his troops was reported to have been greatly damaged; but at the end of April neither side could yet claim the control of northern Mexico.—In the south, similarly, desultory combats between Zapatistas and Carranzistas, particularly in **Yucatan**, yielded no decisive result; while extensive revolts among the Yaqui Indians there aggravated the disorder.—A decree issued in January by Carranza, ordering the virtual confiscation of large estates, was followed, it was reported, by the actual **distribution of land** in the provinces of Vera Cruz, Pueblo and Morelos, particularly to Zapatistas, in consideration of their laying down their arms. In March was announced also a Carranza decree, effective April 1, ordering all textile factories to increase the wages of employees 35 per cent.

CARIBBEAN AND CENTRAL AMERICAN STATES.—Charges of misappropriation of funds in connection with the recent $10,000,000 loan were made against Secretary of the Treasury Cancio of **Cuba**.—The triumph of General Zamor of **Haiti** over the Theodor rebels (see last RECORD, p. 747) proved to be short-lived. Early in November, Theodor, who had been falsely reported by the Zamor government to have been killed, succeeded in routing the Zamor forces and in securing his election as president by the congress. In January, however, the Zamorists, under General Vilbrun Guillaume, again rose against Theodor, and by February 23 had compelled his abdication and flight. On March 1, General Guillaume was proclaimed provisional president by the congress. In April a new insurrectionary force, headed by General Bobo, occupied Cape Haytien and Port Liberte without resistance. On January 2 friction between the government and the National Bank (see last RECORD, p. 747) due to contested claims by the government to certain of the bank's funds culminated in the closing of the bank by order of the government. In February the government resorted to a large issue of paper money.—In December President Baez of **San Domingo** was succeeded by Juan Jiminez.—The financial difficulties of the government of **Nicaragua** compelled the enactment, with the consent of the foreign bondholders, of a law postponing the interest and amortization payments on the bond issue of 1909, due October 1, 1914, and January 1, 1915, for four months and one year respectively. An uprising in April, led by Dr. Salvador Castrillo, formerly minister to Washington, was readily suppressed. —In **Colombia** the falling-off of customs receipts due to the European war

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resulted in the doubling of many of the internal revenue taxes and the imposition of export taxes on gold and woods.—A revolutionary plot in **Costa Rica** was discovered by the police, resulting in the deportation of several prominent residents.

SOUTH AMERICA.—**Economic depression** resulting from the cessation of commerce with Germany was general over South America, and reports of projected loans by various governments, particularly those of Brazil and Uruguay, were current.—A conspiracy against the governor of the state of Rio Janeiro, **Brazil**, originating among the sailors of the same battleships whose crews revolted in 1910, was frustrated. Revolutionary conspiracies in other parts of the country, particularly in the state of Parana, were also reported.—In **Paraguay** an uprising in January against President Scherer, led by Col. Escobar, former minister of war, was promptly suppressed.—On March 1 Dr. Feliciano Viera was elected President of **Uruguay.**—The final collapse of the rebellion against the government of **Ecuador** (see last RECORD, p. 747) was seen in the capture and imprisonment of Col. Carlos Concha, the leader of the insurgents.

IV. THE BRITISH EMPIRE

IMPERIAL AFFAIRS.—In November, the imperial government, with a view to avoiding the disadvantages incident to the separate flotation by each Dominion of the loans required to meet the heavy expenditures entailed by the war, made arrangements with Canada, Australia, New Zealand and South Africa, for **loans by the imperial government** totaling approximately $210,000,000. The money was to be loaned at the rate of interest at which the imperial government had itself borrowed, and was not in any case to take the form of a cash remittance, but was to be used to meet the obligations of the Dominions in Great Britain.—The increase by 5 per cent, in March, of the duties on all British imports into Canada was attacked by the opposition in the Dominion Parliament as a blow at **imperial trade**, but was defended by the Dominion government as in fact increasing the British preference, since duties on all other imports were simultaneously raised 7½ per cent.—On March 16 the House of Lords, by virtue of its power under the India Council Act of 1909, estopped the creation by the government of India of an executive council for the United Provinces of Agra and Oudh, the proposal for which had been approved by the Viceroy's Executive Council in March, 1914, by a majority of one. Commenting on this action in a speech to the Legislative Council of India, Lord Hardinge, the Viceroy, stated that the curtailment of the power of the House of Lords in **imperial legislation** regarding India was "absolutely essential."—On November 4, the British government declared the Turkish sovereignty over **Cyprus** at an end, and proclaimed the island a crown colony. On December 17, similarly, the British government announced the abrogation of the Turkish sovereignty over **Egypt** and its creation as a British protectorate.

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UNITED KINGDOM.—**Parliament** convened on November 11. On the 16th, it voted a war tax of $1,125,000,000, the largest tax in history. It also authorized a loan of $1,750,000,000, which was heavily over-subscribed in a short time. The increase of the army up to 1,000,000, and, a few days later, up to 2,000,000 men was authorized. After a session of sixteen days Parliament adjourned till March.—At the first session of Parliament for the new year, on February 4, the government secured the unanimous adoption of a resolution, for which there was no precedent, devoting the session exclusively to government bills.—On March 1, the House of Commons unanimously voted an **appropriation for war expense** of $1,435,000,000, the largest grant ever voted by Parliament. Of this sum, $185,000,000 was expected to suffice for the month of March, and the remainder was to be expended at the rate of about $8,500,000 per day, beginning April 1. The army supply bill for the fiscal year beginning April 1 was voted in blank, the government being thus given a free hand in determining the purposes for which the appropriations voted should be expended.—The government continued to withhold exact information as to the progress of **recruiting**, announcing however in February that such progress was satisfactory and that no measures of conscription were in contemplation. After the German naval raid upon the Eastern Coast, (see *supra*, p. 347) recruiting was reported to have increased greatly.—On March 9 the House of Commons unanimously passed an amendment to the Defense of the Realm Act (which had been enacted at the opening of the war) extending the provision of that act which empowered the government to take over **munitions factories** to all factories which were capable of being used for making munitions. A week later it was announced that the government would take over the control, but not the ownership, of all munitions factories. The announced aim of such control was the increase and economy of production, through the limitation of profits and the prevention of any stoppage of work because of labor disputes. Arrangements for the settlement of any such dispute in the industries affected were concluded on March 19 at a conference between representatives of the government and of thirty-five labor organizations embracing virtually all the trades affected. The arrangements provided that in no case should any stoppage of work result from a dispute, but that conciliation or, if that failed, arbitration, either by representatives of both parties or by government representatives, should be invoked.—The **arbitration agreement** thus reached was immediately applied with success to several important disputes including that in the Clyde district shipbuilding and engineering industries which had been hanging fire for some weeks. A strike of Liverpool dockers and coalheavers was however terminated only after threats of military measures by the government and threats of suspension by the general executive of the union.—On February 15 was announced an agreement providing for substantial increases in the wages of **railway employees** on the English and some minor Scottish roads. The absence of any prolonged and public controversy in connection with this agreement

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gave rise to the belief that it had been consummated chiefly by the intervention of the government, and it was reported, without official confirmation, that the government had undertaken to assume a share of the resulting burden.—In February was announced a plan for government aid in the development of the **dye industry**, through the formation of a company in which the government would subscribe to a large portion of the stock, and through purchase by the government of the greater part of the supply of natural indigo.—The rapid rise in **prices of foodstuffs** and of coal was made the subject of strong representations to the government, particularly by the Labor party, and in March a Board of Trade inquiry into the subject, looking to possible measures against speculation in these commodities, was announced.—The utilization of **trade union funds** for the purchase of stock in a newspaper was held unauthorized and illegal by the Chancery Court on February 2.—In connection with the attempt of the government to increase production in the munitions and naval construction industries, the deleterious effects of the drink habit among workmen upon production in those and other industries was widely discussed. Proposals for total **prohibition**, suggested, but not officially advocated, by Lloyd George, were opposed not only by the brewing interests but also by many labor leaders, some of whom were inclined to resent the Chancellor's strictures as insulting to the working class. Minor restrictive regulations were however enacted, and a powerful movement for voluntary abstinence was launched by the King, Earl Kitchener and other notables.—Late in April it was announced that during the eight weeks which had elapsed since the establishment of the German "war zone" (see *supra*, p. 346) the **shipping** to and from the British Isles had been greater than in the previous equal period. The arrivals and departures totaled 11,635 ships, as against sixty vessels sunk.—In December, the journal *Irish Freedom* of Dublin, which urged Irishmen not to enlist, was suspended by the police, while the paper *Sinn Fein*, on being ordered to cease printing treasonable matter, likewise suspended.—The Independent Labor party, in convention in February, declared by a large majority that the war was due to secret diplomacy, and called upon the government to make peace at the earliest possible moment.—In March the government, yielding to an insistent demand that no attempt should be made to put contentious legislation in operation during the war, introduced an amendment to the **Welsh Disestablishment Act** (see last RECORD, p. 750), postponing its going into effect until six months after the war. It was agreed by the opposition, in consideration of this amendment, that no other amendment to, or repeal of, the act should be proposed, before the date of Disestablishment, without the consent of both parties. The bill was strongly opposed however by the Welsh section of the Liberal party itself, on the ground that it was a covert attempt to kill the original act.

CANADA.—In December the Minister of Finance announced that the **war expenditures** could be met only by a loan, and that $100,000,000 per year must be borrowed while the war lasted. In March this amount was

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voted. Simultaneously, measures were also enacted for raising additional revenue, through an increase in customs duties (see *supra*, p. 366), and through special internal taxes, including a stamp tax.—The effect of the war upon the money markets having made impossible the continuance of **railway construction** by the Canadian Northern and the Grand Trunk Pacific roads, the government in November advanced to them $10,000,000 and $6,000,000 respectively, accepting their bonds as security. This action, which was made possible only by the issue by the government of treasury notes to the amounts named, in excess of specific statutory authorizations, was explained by the government as having furnished the only means of preventing the disastrous effects upon the trade of the whole country which would have resulted from the cessation of railway construction. The action of the government was ratified by Parliament in March without opposition.—Rumors of a threatened German raid on the Pacific coast towns created considerable alarm early in November, and navigation in portions of the waters about Vancouver was temporarily suspended.—In January an agreement was concluded between the Dominion government and the Province of Ontario for the settlement of the long-disputed question of the jurisdiction of the **islands in Georgian Bay**.—Several **newspapers** in the West were warned against printing pro-German matter, and later the importation of German newspapers from the United States was forbidden.

INDIA.—Despitè a rigorous censorship, indications of a condition of unrest among the native population transpired, such as the approval by the Viceroy's Council of a bill giving the military authorities special powers to act in emergencies to suppress disorder. In March an uprising of Zadrau tribesmen, near Tochi, on the northwestern frontier, and its speedy suppression by government troops, was announced by the government. Unrest and insurrection among the natives in other places were also rumored, and a mutiny of 500 Bengalese troops at Singapore was suppressed only with difficulty and after several civilians, as well as a number of the mutineers, had been shot. By some these outbreaks were taken as evidence that the proclamation of the Holy War (see *supra*, p. 346) was beginning to show results.—In order to conserve the wheat supply it was ordered on December 30 that exports of wheat be restricted to British possessions.

AUSTRALIA AND NEW ZEALAND.—Early in November the **exportation** of wheat, coal and wool from Australia, except to Great Britain, was prohibited. Subsequently the prohibition on the exportation of wool was remitted with respect to shipments to Canada, Japan and the United States. The shortage in the wheat crop, due to drouth, resulted in the removal of the import duty on wheat, in active measures by the government for the extension of wheat cultivation, and in proposals for the nationalization of the flour and bread industries.—In February, in response, it was understood, to a request of the British government, the Commonwealth Parliament enacted measures for the taking-over by the government of all supplies of meat available for export, to be devoted to the use of the British

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and allied armies.—In **South Australia** the ministry headed by Mr. Peake resigned in March, and a Labor ministry, with Mr. Crawford Vaughan as premier, was chosen.—In **New Zealand**, too, the exportation of wool, except to Great Britain and her allies, was forbidden in November. The general elections, held in December, resulted in the retention of the government in power, and in the defeat of the national referendum proposing total **prohibition** of the manufacture or sale of alcoholic beverages.

OTHER POSSESSIONS.—The pro-German revolt in **South Africa**, led by Generals DeWet and Beyers (see last RECORD, p. 753), was suppressed in December, General DeWet being captured and General Beyers killed. Reports that Colonel Maritz, who had escaped to German Southwest Africa, was planning an invasion, led to an official announcement that a conscription order would be issued; but by the end of April this measure had not been taken.—Upon the annexation of **Cyprus** as a crown colony (see *supra*, p. 366), a memorial was presented to the governor, purporting to represent the sentiments of the Greek population, urging that the assumption of control by Great Britain be considered as but preliminary to the restoration of the island to Greece. A memorial of representatives of the Moslem population, however, vigorously opposed this suggestion.—Revolts of natives in **Somaliland** and **Nyasaland** were readily suppressed.

V. CONTINENTAL EUROPE.

FRANCE.—On December 6 the French government began its **return to Paris**, a step which was taken as indicating a complete confidence on the part of the Allies that the capital was safe from the danger of another German forward movement in the near future. The Parliament opened its sessions at Paris on December 22. Following the announcement by Premier Viviani of the government's intention to pursue the war to the end, a **budget** of $1,700,000,000 was voted. To meet its current expenditure, the government secured in the first three months of the new year the extension of the limit upon the issue of defensive bonds to $900,000,000, and the authorization of an additional loan of $200,000,000. By a decree appropriating $60,000,000 for **indemnity** to individuals for damage to property caused by the German occupation, the French government apparently committed itself to the policy of public responsibility for losses of this character.—A bill prohibiting the sale of **absinthe**, enacted in January, was followed in February by the adoption of more stringent regulation governing the sale of all alcoholic liquors.

RUSSIA.—A temporary order, issued in September, for the **prohibition** of the sale of vodka, was on November 15 enacted as a permanent decree and extended to cover all alcoholic beverages.—An **internal loan** of $250,000,000, ordered in November, was floated without difficulty. On February 11, only one day after its assembly for the first time since August, when it had ratified the action of the government in entering the war, the Duma enacted the **budget**, calling for the expenditure of over $1,500,000,

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000. Of this sum less than $75,000,000 was to be met by loans. The decrease in revenue from the government monopoly of alcoholic products (a decrease, it was estimated, from over 25 per cent to less than 5 per cent of the total ordinary revenue) was to be met chiefly by increases in all forms of indirect tax. Reports, emanating chiefly from Austro-German publications, but supported, apparently, by portions of the Russian press itself, described the **economic situation**, resulting largely from the stoppage of indispensable German imports, as acute. Strikes in Petrograd, Moscow and Odessa, extending even to the Putiloff armament works, and the widespread employment of military terrorism, were reported.—The closing of the Dardanelles, moreover, made impossible the exportation of the major part of the spring **wheat crop**. The resulting derangement of Russian economic life was alleged to have caused the Allies to attempt the forcing of the Dardanelles, (see *supra*, p. 346) earlier than they might otherwise have done.—In March was reported, with apparent authenticity, the suspension of all special rights of local self-government in **Finland**. The dispatches hinted at the probability of the imposition upon Finland of the Russian conscription law, from which she had hitherto been exempt. Almost simultaneously was reported the promulgation by the Czar of a decree conferring upon **Poland** local self-government, on the limited scale obtaining in Russia, and permitting the use of the Polish language in the local zemstvos thus established. The material situation however of virtually all that part of Poland which had been the scene of operations, i. e., the area west of Warsaw, was reported to be one of almost complete ruin, and it was alleged that the Jewish population particularly had suffered fully as much from the passage of the Russian as from the invasion of the German forces. In January the government decided to widen the gauge of the **Archangel railway** and to change its route to bring it across to the eastern shore of the Dwina somewhat nearer the port, and also to construct new lines from Archangel to Kotlas and Ukta.

GERMANY.—At the opening of the second war session of the Reichstag on December 2, a **war credit** of $1,250,000,000 was voted, Karl Liebknecht, a leading Social-Democrat, alone voting against it. **Budget** estimates adopted in February by the Bundesrath called for the expenditure during 1915–16 of over $800,000,000 for ordinary expenditures and over $2,500,000,000 for war expenditures, the latter to be raised entirely by war loans. On March 20 the budget was adopted and a further war credit of $2,500,000,000 authorized, Liebknecht again alone dissenting. The subscriptions to the war loan, authorized in December, were said to have totaled $2,500,000,000, double the amount asked for. — Preliminary measures for the **conservation of the food supply**, prescribing maximum prices on potatoes and other products, and making mandatory the use of rye and potato flour in the baking of all bread, were followed by a decree of the Bundesrath, on February 1, declaring all private stocks of corn, wheat and flour confiscated at a fixed price, and ordering all municipalities

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to lay up stores of preserved meats. A limited bread ration, applicable to the entire population of the empire, was also fixed. Simultaneously all stocks of copper, tin, aluminum, lead, antimony and nickel were ordered reserved for military use. On April 1, regulations designed to prohibit any further rise in the price of fodder were promulgated. The conservation of the supply of petroleum was also provided for.—The continued support of the government by the great majority of the **Social-Democrats** was evidenced by the abstention of only 14 of the 110 Social-Democratic members of the Reichstag from the vote on the war credits on December 2, and the public opposition of only one member, Liebknecht. The resignation in February, however, of the prominent Berlin deputy, Ledebour, from the executive committee of the party, and the heavy vote polled by the anti-government candidate for the Social-Democratic nomination in a Social-Democratic constituency in Hamburg, were pointed to as evidence that the opposition in the party was growing; while several of the leading party papers grew increasingly hostile in tone.—In Berlin, the city government decided upon the **municipal ownership** and operation of the electric power plant.

AUSTRIA-HUNGARY.—Peculiar interest attached to the progress of the **internal loan** of $670,000,000, opened for subscription in November, both because of the extraordinary measures which were alleged to have been taken by the government to ensure its success, and because of the persistent reports of popular disaffection. The official announcement, in January, that the entire loan had been subscribed, seemed, when compared with the heavy over-subscription of the far greater loans of Germany and Great Britain, to give support to unfavorable inferences.—On January 13 Foreign Minister von Berchtold resigned and was immediately succeeded by Baron Stephen Burian, a Hungarian. Despite the official announcement that the change was due merely to personal reasons of Count von Berchtold, opinion was general that it represented an attempt on the part of the Emperor to appease **Hungarian dissatisfaction** with the conduct of the war.—Reports of **anti-war demonstrations** in Hungary were frequent, especially during December and January, during the first Russian advances in forces upon Hungarian borders (see *supra*, p. 345). There were reports also of friction between the Austrian and Hungarian governments regarding the participation of Austria in the use of the Hungarian grain crops.—Following the promulgation of a new mobilization order, late in January, outbreaks were reported in several parts of the empire, but particularly among the Slavs in the south.—It was announced in March that reservists between the ages of 28 and 42, who had been rejected as unfit, would be summoned to the colors and reëxamined.—The steady rise in the **price of foodstuffs**, due in large measure to the stoppage of imports, compelled the government to follow the course previously adopted by Germany. On February 26, the seizure of all grain and flour in the empire was decreed, and in March a system of per-capita distribution was inaugurated in large cities.

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ITALY.—Following an overwhelming **vote of confidence** passed by the Chamber upon its convocation in December, the government continued to push its military preparations with the greatest vigor. A **loan** of $200,000,000 for military expenses was authorized and was promptly subscribed. —The garrisons on the **Ægean Islands** held by Italy were heavily reinforced and it was reported that the islands were being fortified. The **mobilization** order, on January 28, was extended to include even the so-called "third category," consisting of men exempt from service in times of peace, but now summoned for training as a territorial-defense force. It was reported in February, though apparently with some exaggeration, that the men under arms and in training numbered 2,000,000. At a brief session in March, the Parliament enacted drastic "**defense measures**," which, among other things, gave to the government the right to appropriate for military purposes **inventions** made by Italians, and forbade newspaper publishers, under severe penalties, from publishing any information relative to military preparations.—Upon the resignation of Finance Minister Rubini because of his opposition to the cabinet's policy of meeting the expenditures for military preparation by loans rather than by taxation, his portfolio was assumed, on November 5, by Paolo Carcano. At the same time the foreign portfolio, left vacant by the death of Marquis di San Giuliano, was given to Baron Sidney Sonnino, an ardent advocate of territorial expansion. —Despite the continuance of mobilization, and the transference of the volunteer army to Tripoli, **unemployment** continued to be severe and occasioned numerous demonstrations in December. The return to Italy of enormous numbers of Italians formerly employed in the belligerent countries, and the stoppage of the normal influx of tourists were believed to be the important causes of unemployment. Moreover, despite the prohibition of the export of major foodstuffs, the abolition of grain duties and the reduction of freight rates on foodstuffs on the state railroads and the subsidized steamship lines, the **cost of foodstuffs** remained abnormally high, and bread riots were reported from several cities in the winter.—On January 13 and 14 in the whole of central Italy, and particularly in the region about Avezzano, there were violent **earthquakes**, resulting in the loss of almost 30,000 lives and $60,000,000 worth of property, 16 towns being completely destroyed. The government appropriated $1,000,000 for relief work and announced that the help of other nations would not be accepted.—Early in November attacks were made by Bedouin tribesmen, alleged to have been acting under Turkish influence, upon Italian settlements in the Cyrenaica region of **Tripoli**. Energetic military measures taken by the government at Rome resulted in the speedy suppression of their outbreaks.

BALKAN STATES.—Shortly after the abdication of Mpret William of **Albania** (see last RECORD, p. 757), Essad Pasha, the exiled war minister, set himself up as provisional president, with headquarters at Tirana, and for some weeks maintained his authority over the interior of northern Albania. Disaffection among the Moslem tribes, however, said to have been incited

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by Austro-Turkish emissaries with a view to using the Albanian population to harass the Serbian and Montenegrin frontiers, set in late in December and great disorder again prevailed, culminating in an attack in force on Durazzo on March 25, which was repulsed with great difficulty. The disordered state of the country occasioned the complete military occupation of Avlona, and the landing of forces at Durazzo, by Italy (see *supra*, p. 350). The re-occupation of Epirus by Greek forces, at about the same time, though declared by the Greek government to be merely for the purpose of restoring order, was generally regarded as permanent. A great scarcity of food, owing partly to internal disorders and partly to the isolation of the country by the war in neighboring countries, intensified the misery of the situation.—On March 6 Prime Minister Venezelos of **Greece** announced the resignation of himself and his cabinet because of the disapproval by the king of their foreign policy, which strongly favored the immediate entrance of Greece into the war on the side of the Allies. A new cabinet was formed by Demetrios Ghounaris. The resignation of the Venezelos cabinet was variously interpreted as a weakening of the war party due to the repulse of the Allied fleet at the Dardanelles (see *supra* p. 346), and as a clever device for delaying Greece's entry into the war until Bulgaria's intentions should become more clear. Inasmuch as the Venezelos cabinet still retained the support of the Chamber, the King on March 11 prorogued Parliament until after the general elections. The support of great numbers of Greek refugees from Thrace and Asia Minor imposed a burden upon the national treasury.—An epidemic of typhus and typhoid, extending over the whole of **Serbia**, was reported during February and March. No accurate information regarding the number of deaths resulting was obtainable, but conditions were described as extremely desperate.—In **Rumania** mobilization continued without interruption, and in February the Parliament empowered the government to declare, at any time it considered desirable, a stage of siege.

OTHER EUROPEAN STATES.—The resources of the government of **Holland** were heavily strained to meet the cost not merely of the continued mobilization, but of supporting the enormous number of Belgian refugees. In December, accordingly, a loan of $110,000,000 was authorized. The government announced that if the loan were not promptly taken up, a forced loan, on much less advantageous terms, would be resorted to. The loan was successfully floated, however, without apparent difficulty. In order to stimulate the fishing industry the government in February opened a number of fish shops in Amsterdam.—Because of the continued rise in the price of wheat, the government of **Denmark**, in January, took over all flour then in the country, thus in effect prohibiting its further export. As had been anticipated (see last RECORD, p. 758) the new Danish Diet approved, in April, the constitutional amendments proposed by the government, conferring upon women the right of suffrage and of sitting in the Diet, and abolishing the special property qualifications for membership in

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the Landsthing. In order to become effective, however, these amendments must be approved also by the next Diet.—In November a loan of $4,000,000, made necessary by the extraordinary military expenses, was authorized by the government of **Norway**, and was promptly taken up by a banking syndicate. In January, by an authorization for the expenditure of $12,000,000, the government embarked upon the policy of developing, under state ownership and operation, the principal water powers of the country, for the purpose chiefly of generating electricity for the state railroads. Simultaneously, the electrification of the Drammen-Christiana road was begun.—On November 24 the Parliament of **Portugal** voted to enter the war on the side of the Allies whenever the government should so decide. On December 5 the cabinet resigned in a body. A Democratic cabinet, formed by Victor Couthino, failed to receive the confidence of either house, being attacked as too partisan to serve in the war crisis, and in January a cabinet under General Pimento Castro was formed. Though the new government was, apparently, sufficiently strong to maintain its authority in the capital, there was much disaffection among the radical elements in the provinces. Finally, in March, at a congress of Democrats held at Lamego, a revolutionary government, to be known as the "Republic of Northern Portugal," was proclaimed, with General Antonio Barreto as president. Apparently no measures were taken by the Lisbon government against this insurrection. Charging that the government at Lisbon had become virtually a military dictatorship in the hands of Premier Castro, the minister to France, Joas Chagas resigned his post.

VI. ASIA AND AFRICA

CHINA.—A general **amnesty** to the leaders of the revolutionary propaganda, and an invitation to them to coöperate with the government, was made public on February 11.—In January the **foreign portfolio**, until then filled by President Yuan, was accepted by Lu Cheng Siang, a statesman and diplomat of long experience.—The landing of Japanese troops at Shanghai occasioned serious **anti-Japanese** riots there.

JAPAN.—The Diet convened on December 15, only to be dissolved when it rejected, by a large majority, the quarter-billion-dollar **budget** proposed by the government, calling for great enlargement of the military and naval establishments. At the **elections** held in March the factions supporting the government were returned with greatly increased strength, the Doshi-Kai or Constitutionalist party returning 150 members. The total government strength was estimated at 281 as against 145 for the opposition. —The electoral campaign was noteworthy not merely for the popular interest manifested, but also for the **participation of women** in the campaign for the first time in Japanese history.—In January Viscount Kanetake Oura relieved Premier Okuma of the Interior portfolio.

EGYPT.—Martial law was declared by Great Britain on November 3, and shortly afterward the British military forces were greatly strengthened

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by the arrival of Canadian and Australian contingents. On December 17 the British government announced that it considered Turkish suzerainty over Egypt terminated and declared Egypt thenceforth a **British protectorate**, Sir Arthur McMahon, the British agent, being declared High Commissioner. Simultaneously, Abbas Hilmi, the **Khédive**, who was in Constantinople, ostensibly for personal reasons, but in reality, the British government alleged with apparent truth, for the purpose of assisting the Turks in the invasion of Egypt, was declared deposed and Prince Hussein Kemal, son of the exiled Khédive Esmai, an administrator of long experience, was proclaimed **Sultan** of Egypt, the new title indicating Egypt's complete independence of Turkey.

[For colonies and dependencies in Africa and Asia, see the United States, the British Empire and Continental European states, *supra*.]

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